

**MAY 18, 2005**

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LR 161-166

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Pam Redfield, from District 12. Senator Redfield.

SENATOR REDFIELD: (Prayer offered.)

SENATOR CUDABACK: We thank you, Senator Redfield, for doing that for us. We appreciate it. We call the eightieth day of the Ninety-Ninth Legislature, First Session, to order. Senators, please record your presence. Record please, Mr. Clerk.

ASSISTANT CLERK: There is a quorum present, Mr. President.

SENATOR CUDABACK: Mr. Clerk, any corrections for the Journal?

ASSISTANT CLERK: No corrections this morning, Mr. President.

SENATOR CUDABACK: Messages, reports, or announcements?

ASSISTANT CLERK: Mr. President, I do. Agriculture Committee offers a notice of committee hearing on the appointment of Greg Ibach to the Department of Agriculture. Interim study resolutions: LR 161, LR 162, LR 163, LR 164, by Senator Stuthman; Senator Baker offers LR 165; Senator Combs, LR 166. (Legislative Journal pages 1577-1580.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Mr. Clerk, first agenda item, legislative confirmation reports.

ASSISTANT CLERK: Mr. President, the first appointment is for Brenda L. Decker as Chief Information Officer. This is offered by Senator Schimek. It's found in the Journal on page 1514.

SENATOR CUDABACK: Senator Schimek, Chairperson of the Government, Military and Veterans Affairs Committee, you're recognized to open on the first confirmation report.

SENATOR SCHIMEK: Yes. Thank you, Mr. President and members.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

The Government Committee had a hearing on the appointment of Brenda Decker last week, and forwarded it to you for your consideration. The position is that of Chief Information Officer. And I have to say that I think all the committee was very impressed with the qualifications of this candidate. The position is actually the director of DAS' division of communications. And Ms. Decker actually has worked for DAS communications since 1978, so she has a lot of knowledge of the communications division. She was very enthusiastic about her job. And in fact, some of the additional information I might give you is that Ms. Decker was recognized in the March 2003 Government Technology Magazine ad as one of the top 25 doers, dreamers, and drivers of government technology in the country. And I think it's important to tell these kind of things about our state employees, because by and large, we have a very good, and in some cases remarkable number of state employees. She also was the National Association of State Telecommunications Directors, and served as the national president from 2001 to 2002. And she's had a national designation of certified manager. We found her extremely enthusiastic about her job, and had no question about forwarding her name to you for consideration. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the opening on the first confirmation report by the Government, Military and Veterans Affairs Committee. Open for discussion on that motion. Anybody wishing to discuss the first confirmation report? Seeing none, Senator Schimek, you're recognized to close on the confirmation report. She waives closing. The question before the body is the first report offered by the Government, Military and Veterans Affairs Committee. All in favor vote aye; those opposed vote nay. Have you all voted on the confirmation report who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal pages 1580-1581.) 30 ayes, 0 nays on the adoption of the report.

SENATOR CUDABACK: The first confirmation report has been adopted. Chairperson Schimek, you're recognized to open on the second confirmation report. (Legislative Journal page 1514.)

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

SENATOR SCHIMEK: Thank you, Mr. President and members. This particular nominee is also, I think, very well equipped to be reappointed to the Accountability and Disclosure Commission. And I have to tell you that she actually came before the committee in the summer of 2002, when she was appointed to fill a vacancy. And Kim Quandt was reappointed this time, also by the Secretary of State, John Gale. She lives in Sidney, and has a law degree, and works in a firm out there. She's been very involved in her community, through the health center foundation, chamber of commerce, county drug court, country club, Foster Care Review Board, and others. She seems eminently qualified. She was unable to attend our hearing. And we have a pretty strong rule about that in Government Committee. We want to see these people in person. But we make allowances when...especially for distance, and especially if we've already had them in person before us once before. So Secretary of State John Gale came in on her behalf. She did send a letter to us, an e-mail, letting us know that she was very interested in serving again, that she takes her duties very seriously, and strives to be neutral and fair in all decision making. So we, again, felt very, very comfortable in forwarding her name to the body for their vote. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the opening on the second report by the Government, Military and Veterans Affairs Committee. Open for discussion. Senator Schimek, there...Senator Schimek waives closing. The question before the body is adoption of the second confirmation report by the Government, Military and Veterans Affairs Committee. All in favor of the report vote aye; those opposed to the report vote nay. We're voting on the adoption of the confirmation report offered by Chairperson Schimek of the Government, Military and Veterans Affairs Committee. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 1581.)  
31 ayes, 0 nays on the adoption of the report, Mr. President.

SENATOR CUDABACK: The report has been adopted. We now go to Final Reading, state claims and budget bills. Members, as you

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 421, 737

all know, these bills contain the emergency clause, and it does require 33 votes. The first...the votes will be to suspend the at-large reading with the asterisk. Mr. Clerk, first bill...after members take their seat, please. We are on Final Reading.

ASSISTANT CLERK: (Read LB 737 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 737E pass with the emergency clause attached? All in favor vote aye; those opposed vote nay. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1582.) The vote is 44 ayes, 0 nays, 5 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 737E passes with the emergency clause attached. Mr. Clerk, LB 421E. The first vote will be taken to dispense with the at-large reading. All in favor vote aye; those opposed vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: 37 ayes, 2 nays on the motion to dispense with the reading, Mr. President.

SENATOR CUDABACK: The at-large reading is dispensed with. Mr. Clerk, please read the title of LB 421E.

ASSISTANT CLERK: (Read title of LB 421.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 421E pass with the emergency clause attached? All in favor vote aye; opposed vote nay. If you allow me, I will announce that the Miller & Paine cinnamon rolls in honor of Senator Engel's birthday today. And I think him and Senator Erdman had about the...born on about the same day, or day after. That's what he told me, anyhow. So, happy birthday, Senator Engel. (Applause) Record please, Mr. Clerk.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 421-424

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1583.) The vote is 44 ayes, 0 nays, 5 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 421E passes with the emergency clause attached. Mr. Clerk, LB 422E.

ASSISTANT CLERK: (Read LB 422 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 422E pass with the emergency clause attached? All in favor vote aye; all those opposed vote nay. Have you all voted on the question who...record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1584.) The vote is 43 ayes, 1 nay, 5 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 422E passes with the emergency clause attached. Mr. Clerk, LB 423E.

ASSISTANT CLERK: (Read LB 423 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 423E pass with the emergency clause attached? All in favor vote aye; those opposed vote nay. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1584-1585.) The vote is 44 ayes, 0 nays, 5 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 423E passes with the emergency clause attached. Mr. Clerk, LB 424E.

ASSISTANT CLERK: Mr. President, the first vote is to dispense with the Final Reading of LB 424.

SENATOR CUDABACK: All in favor of the motion vote aye; those

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 424, 425

opposed, nay. Record please, Mr. Clerk.

ASSISTANT CLERK: 38 ayes, 3 nays on the motion to dispense with the reading, Mr. President.

SENATOR CUDABACK: The vote was successful. Mr. Clerk, please read the title.

ASSISTANT CLERK: (Read title of LB 424.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 424E pass with the emergency clause attached? All in favor vote aye; those opposed vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1585-1586.) The vote is 45 ayes, 0 nays, 4 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 424E passes with the emergency clause attached. Mr. Clerk, LB 425E.

ASSISTANT CLERK: Mr. President, with respect to LB 425, Senator Chambers would move to return the bill to Select File for a specific amendment. That amendment is AM1632. (Legislative Journal page 1557.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on your motion to return...

SENATOR FOLEY: Point of order.

SENATOR CUDABACK: ...for a specific amendment.

SENATOR FOLEY: Point of order.

SENATOR CUDABACK: Senator Foley, for what purpose do you rise?

SENATOR FOLEY: Mr. President, I'd ask a ruling of the Chair as to whether or not it would be appropriate to first suspend the rules, prior to the consideration of any amendments to the

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 425

budget bills. Today is the eightieth day, and all of our budget bills must be completed by today. If any of these bills are amended, the earliest they could be completed was the eighty-second day. And it would seem to me that we ought to first suspend the rules, or at least consider a suspension of rules, prior to the consideration of any amendments.

SENATOR CUDABACK: Members,...Senator Foley, there is no rule that says that you have to meet the deadline of the eightieth day. And the rules did not say that a member cannot file a motion at any time. So Senator Chambers, you are recognized to open on your motion to return for a specific amendment.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this amendment has been discussed several times. Considerable debate has occurred. I believe that people's opinion has been settled. There is no need for me to prolong the discussion. What this bill...this amendment would do is prohibit discrimination by any of these state agencies based on sexual orientation. We all know that the budget bill itself does not become a part of the statute. This is intent language. It expresses the position of the state that there should be no discrimination by these agencies based on sexual orientation. Yesterday, Senator Landis reiterated a point that he had made before, that the state should lead the way. And that's what this amendment is designed to do--move the state in that direction. This idea of nondiscrimination is going to become a fact of life in this, every state, and throughout this country. There is no reason for Nebraska to linger at the back of the pack on a matter such as this. If there are any questions, as usual, I am prepared to answer them. This vote would be to return the bill. And my purpose in returning it is to attach the amendment which you have on your gadget. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on the motion to return for a specific amendment. Open for discussion. Senator Foley. Senator Foley, you're recognized to discuss the motion to return for specific amendment.



TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 425, 426

SENATOR FOLEY: Thank you, Mr. President. Needless to say, I'm strongly opposed to the amendment. I've been opposed to these amendments all along. And this is, what, the fourth or fifth time we've had to deal with this issue? And probably deal with it some more yet this session. I have a specific concern about this particular version of the amendment, in that it speaks to any agency which receives funding. And a reasonable interpretation of the word "agency" could refer to a whole host of players who are receiving state funding by virtue of the state budget--contractors, grantees, all kinds of entities that are receiving funds. And the breadth of this amendment is just astonishing. It goes far beyond what we did on LB 426, which only applies to four specific institutions. But this takes us a quantum leap beyond that, and reaches not only to state government agencies, but also to private players, private parties and entities that are receiving state funds. So there are many, many reasons to oppose this amendment. That's just another reason. Thank you.

SENATOR CUDABACK: Thank you, Senator Foley. Further discussion, the motion to return for specific amendment? Senator Chambers, there are no lights on. You're recognized to close on your motion.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, in the context of a budget bill, the term "agency" applies to state agencies, and we know that. This is not a generalized amendment or proposal that goes beyond these agencies of the state which are going to be funded by way of this budget bill. I'm asking that we vote to return this bill to Select File, at which time I will attempt to persuade you to add this proposal. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the closing on the motion to return. The question before the body is, shall shall LB 425E be returned for specific amendment? All in favor vote aye; those opposed vote nay. We're voting on the motion to return for a specific amendment. Have you all voted on the question who care to? Have you all voted? Record please, Mr. Clerk.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 425, 426

ASSISTANT CLERK: 14 ayes, 19 nays on the motion to return, Mr. President.

SENATOR CUDABACK: LB 425E is not returned. First motion will be to suspend with the at-large reading. All in favor of dispensing with the at-large reading vote aye; those opposed vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: 34 ayes, 3 nays on the motion to dispense with the at-large reading, Mr. President.

SENATOR CUDABACK: The motion was successful. The at-large reading has been dispensed with. Mr. Clerk, please read the title of LB 425E.

ASSISTANT CLERK: (Read title of LB 425.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 425E pass with the emergency clause attached? All in favor vote aye; those opposed vote nay. (Visitors introduced.) Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1587.) The vote is 34 ayes, 10 nays, 1 present not voting, 4 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 425E passes with the emergency clause attached. Mr. Clerk, LB 426E. The first vote will be to suspend the at-large reading. All in favor of the motion vote aye; those opposed, nay. Record please, Mr. Clerk.

ASSISTANT CLERK: 34 ayes, 4 nays to dispense with the at-large reading, Mr. President.

SENATOR CUDABACK: The motion was successful. Mr. Clerk, please read the title of LB 426E.

ASSISTANT CLERK: (Read title of LB 426.)

SENATOR CUDABACK: All provisions of law relative to procedure

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 13, 312, 426, 427

having been complied with, the question is, shall LB 426E pass with the emergency clause attached? All in favor vote aye; those opposed vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1588.) The vote is 39 ayes, 4 nays, 2 present not voting, 4 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 426E passes with the emergency clause attached. Mr. Clerk, LB 427E.

ASSISTANT CLERK: Mr. President, the first motion on LB 427 is offered by Senator Chambers. He'd move to return the bill for...to Select File for specific amendment, that amendment being AM1633. (Legislative Journal page 1557.)

SENATOR CUDABACK: Senator Chambers, you're recognized on your motion to return for a specific amendment.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, this is a version of the more extensively written amendment that Senator Landis authored. The change that I made in it was to eliminate the word "relevant" and put in "discrimination," that there would be no basis for discrimination based on sexual orientation whenever the state is acting as an employer. And this would extend to the hiring, firing, retaining, promotion, and all of the other employer-employee relationships. This provision had gotten 24 votes when Senator Landis offered it. I'm presenting substantially the same offering again. As with the last unsuccessful effort, I pointed out that there had been considerable debate. I believe that people's minds are made up, so I will not extend the time taken on this provision this morning. Senator Foley mentioned that the idea will probably surface on other occasions during the session. And he probably is right. But I want to remind the body of one thing that I had bound myself to yesterday, and that was to forego making use of LB 13 as a vehicle to debate my bill, which is languishing in the Judiciary Committee. Senator Landis had offered to make that bill available, in exchange for my not tying up in various ways LB 312 at the first stage of debate. He lived up to his

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 427

end of it. I would not be violating my arrangement if I continued to hold to that agreement and use the bill for that purpose. But I'm not going to. I will take my opportunities as they present themselves. But Senator Landis is being given, by me, his bill back to do with whatever he pleases. On this one, the vote before us would be to return the bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You heard the opening on motion to return. Open for discussion on the motion. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, there are many aspects of this that we could discuss again. But I just want to emphasize again the aspect of this that has to do with economic development. You know, this session is going to go down in history as our economic development session, when...a session when we...our primary effort was to make a big push to establish business incentives, to establish training, to try to stop the brain drain, to try to provide jobs in Nebraska, to try to attract people to Nebraska. This particular provision could well be considered an aspect of this. I don't know how large this community is. The estimates range anywhere from 3 percent to 10 percent. But to the extent that we do not create a fair environment for these people in Nebraska, they will move elsewhere. And to the extent that we don't create a fair environment for these people in Nebraska, they will not come to Nebraska. And if you don't believe that this element of our population is just as creative, just as hardworking, just as contributing to the community as any other group, then I submit to you, you don't know these people. There are many such people in my district. They're good people. They're hardworking people. They add to this economy, they add to this community, and they ought to be treated fairly. It's all a part of economic development, beyond strict reasons of fairness.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Foley.

SENATOR FOLEY: Thank you, Mr. President. Senator Beutler, no one quarrels with your argument that these people are as creative, as productive, and as hardworking as any of the rest

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 425, 427

of us. And they have every right to come to Nebraska, to work in Nebraska, to stay here and live here, and so forth. No one disputes that. So let's put that to rest. I want to get back to the issue I raised earlier. Section 5 of Rule...of our rules, Rule 8, provides, and I quote, "The appropriations bills shall be passed no later than the 80th legislative day in a 90 day session." It couldn't be any more clear. So any amendment to any of these bills is going to require the bill to be laid over. And the earliest we could pass that bill then would be the eighty-second day. That violates our rule. And I recognize that the Chair has already ruled against me on this. I'm not going to try to overrule the Chair. But I am concerned that we're violating our rules by attempting to amend a bill that cannot be amended without a suspension of rules. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Chambers, there are no further lights on. You're recognized to close on your motion.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I handed out two items this morning, and it was for a purpose. Senator Foley is representing his religious views, which he can do, and anybody can do. Anybody, such as myself, can represent nonreligious views. However, I make it clear what my position is, always. Senator Foley managed to get into the budget bill the Catholic/pro-life agenda. He didn't find any problem with doing that in a budget bill. I handed you the article or the column written by the person who works for the Catholic Church. He talked about how he and a lady who represents the pro-life persuasion went to Pennsylvania to get some orientation on how to implement what Senator Foley persuaded the Legislature to put into the budget bill. So you have given that in LB 425. What I am presenting does not cost the state any money. All it declares is that the people who work for this state are going to be treated with fairness. If they are not, they will have recourse, which currently they do not, under the law of this state. A glaring gap in Nebraska's law is that a substantial portion of the population is not protected against the discrimination which does occur. Senator Foley isn't the only one with his type of attitude. But it is

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 427

that attitude which should not find its way into the workplace which is controlled by the state of Nebraska. The other item was a World-Herald editorial. And the World-Herald is not considered by anybody a radical newspaper. What they pointed out was how a Catholic bishop, rather than have Catholic Charities lose its contract with the city of San Francisco, made an accommodation with the city's requirement that public...that healthcare be provided for all employees of those who have contracts with the city, including gay and lesbian people. So the bishop adroitly sidestepped that issue, as the editorial pointed out, reflecting what was contained in a San Francisco Chronicle article about the situation, and focused on the absence of healthcare, and that such absence was a national shame. And he forged an accommodation which would allow such coverage to apply to any person and the persons in that individual's household, as far as the providing of this healthcare, and it would thereby cover gay and lesbian people. My amendment is designed to state that when it comes to being an employer, this state is not going to discriminate. I hope that you will vote to return this bill, so that the amendment can be adopted. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the closing on the motion to return LB 427E for specific amendment. The question before the body is, shall LB 427E be returned for specific amendment? All in favor vote aye; those opposed vote nay. The question before the body is to return LB 427E for a specific amendment. Have you all voted who care to? Have you all voted? Record vote has been requested. Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1588-1589.) The vote is 18 ayes, 21 nays on the motion to return, Mr. President.

SENATOR CUDABACK: The motion was not successful. LB 427E is not returned. (Visitors introduced.) We now continue with the last bill on Final Reading. Mr. Clerk, LB 427E.

ASSISTANT CLERK: (Read LB 427 on Final Reading.)

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 364, 427, 748  
LR 167-183

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 427E pass with the emergency clause attached? All in favor vote aye; those opposed vote nay. Have you all voted on the question who care to? Have you all voted? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1589-1590.) The vote is 35 ayes, 8 nays, 2 present not voting, 4 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 427E passes with the emergency clause attached. Mr. Clerk, items for the record, please.

ASSISTANT CLERK: Mr. President, your Committee on Enrollment and Review reports LB 364 as correctly engrossed. New interim study resolutions: LR 167, LR 168, LR 169, LR 170, LR 171, LR 172, LR 173, LR 174, LR 175, LR 176, LR 177, LR 178, LR 179, LR 180, LR 181, LR 182, and LR 183. (Legislative Journal pages 1590-1599.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now move on to the next agenda item. The motion. Mr. Clerk, please read the motion before the body.

ASSISTANT CLERK: Mr. President, with respect to LB 748, Senator Chambers has moved to reconsider the vote to recommit to committee. That issue is pending. It was offered on May 9. (Legislative Journal page 1433.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Chambers, to open on your motion.

SENATOR CHAMBERS: Mr. President, members of the Legislature. We've had emotion, we've had a motion, and now we're going to have a bit of commotion. There are two bills that a committee let come on the floor, and I call that a committee malfunction. There was the lack of whatever it takes to do the work that a committee ought to do. So dumped onto the floor was work that the committee could not bring itself to do, which was the committee's job to do. There are definitely sides on this bill and LB 48. The irony is that the only difference between the



TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

two, really, is that this one has a seven in front of it. Otherwise, you have 48 and 48. A motion was made and voted on successfully, to return LB 748 to the committee from which it emerged. LB 48 ought to have the same fate. It ought to go back. My motion is to give the opportunity to discuss that point. Both bills should be handled the same way. A lot of time will be taken on either or both of them if they stay out here, but if LB 748 goes and LB 48 does not, then because of the system and the process, I think some people will join me in digging heels in and making sure LB 48 goes nowhere, but that we give it plenty of extended debate. And if others will not participate, I will do all I can to stop that bill. If my motion to recommit is unsuccessful, that means the bill is returned to the committee. It's off the agenda. LB 48 remains out here. I'm not going to try to get anybody to commit openly, one way or the other, how they intend to vote when we get to LB 48, if any votes are allowed. But the first thing I'm going to do, if this vote to reconsider fails, is to put some of those motions on LB 48, to make sure that we have a chance to discuss a lot of those kinds of motions, without getting to LB 48 and its lack of merit. This is a situation we're confronting, where philosophies clash. I happen to be in favor of the MUD position. I'm opposed to LB 48. Such being my view, I will do all I can to see that LB 48 is defeated, one way or the other. I have not strategized, if that word can be used, with those who support LB 748, or those who support LB 48, but I could not let the situation deteriorate in the way I believe occurred when the vote was taken to recommit LB 748 to committee. The only way to tie these two bills together is through a debate of the kind that can occur on this motion. LB 48 is down the list and heads the Kruse Division. So there will be quite a bit of other discussion before LB 48 is reached. Maybe it would be good to have enough discussion to make sure LB 48 is not reached. There is more than one way to skin a cat, and I'm aware of those ways. However, neither LB 748 nor LB 48 is a bill that has me up in arms. I'm going to support LB 748, if one of them winds up being before us for a final vote, but there are others who have a much stronger view about both of them, and maybe see heavier stakes than I do at this point. I'm just kind of taking my time this morning, relishing the opportunity I have to commiserate with my colleagues. And I believe what I should do is take all



TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

of the time that I feel I need to take on the remaining issues before us. We have not just emerged from a great civil war; that hasn't started yet. What we've come through is a very uncivil, uncivilized couple of votes. But that is not the end of all things. I'm going to listen to the debate and see which way the body is going to move. One bill should not be treated in the fashion that LB 748 has been treated, if the other bill, LB 48, does not receive the same treatment. The committee failed the Legislature by letting both of those bills come out here. They should have selected one, or held them both. But to just throw their hands up and say, this is too much for us, we can't handle it--this is the subject matter of this committee, but we cannot provide the leadership the body needs, so we're just going to throw it out to the body. There need not have been a hearing. There need not have been anything. They should have just done it at the outstart. Maybe the rules should have been suspended and both should have been referred directly to General File, without a hearing. In effect, that's what we have. When things are put out here, they must be dealt with. In keeping with my disposition and my practice, I shall deal with these two items in the way that I see fit, in disregard of what anybody else does. If not another word is uttered by anybody, it matters not to me, but if this vote is unsuccessful, I cannot allow LB 48 to remain unencumbered, because in the press of business, that is a bill that could slip past without me paying attention to it. I don't know that that will happen, but such things can. And I'm going to do all I can to be sure it doesn't happen, as far as I'm concerned. Mr. President, how much time do I have remaining?

SENATOR CUDABACK: About one twenty-seven, Senator.

SENATOR CHAMBERS: I was going to ask a question or two, but I think I will not do that, because there's too little time for that. But I am going to take all of the time that I have. Some people have told me that the same ones who voted to recommit LB 748 would vote to recommit LB 48. I do not take things like that for granted. There's no automatic pilot in here, as far as I'm concerned, so I have to behave as though the worst thing that can happen, will happen on bills of this kind, where there is so much heavy lobbying on both of them. I think the

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

lobbyists supporting LB 748 are wise and correct, maybe by accident, but they happen to be on the right side. Those on the side of LB 48, well, we haven't talked about LB 48; we'll see how they comport themselves. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Before we discuss the motion to recommit, members, just a reminder, study resolutions have to be introduced by noon today. The study resolutions have to be introduced by noon today. Just a reminder. Discussion of the Chambers' motion. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I don't know that I can answer some of the, I guess, questions or concerns, ideas, attitudes, that Senator Chambers just posed. I can speak specifically to this reconsider motion. When this first occurred, I was confronted on a couple of occasions. I'm not going to tell you by who, but somebody said--one of the people said, they actually recommitted a bill to committee? Wow, that's never happened before. Now I don't believe that. I think that has happened, certainly not during my time, and probably not during this other person's time. It's probably happened. The other person said, in all my time here, that has not happened. Now, again, I don't mean to belabor this, it's not an "oh, poor me" type of attitude that I'm tossing out for you, or an "oh, poor Urban Affairs Committee" attitude. But what it is right now, for me, I voted to recommit it, and I'm not going to significantly change on that position. What I'm going to do is just not vote on this, because I think if I said, ah, let's not send it back to the Urban Affairs Committee, I think that sends an inconsistent message, and I'm not willing to do that right now. Some of you out here might be. You're more than welcome to that...to that position; I'm not. But what I do want the body to consider--respectfully, I ask you to consider--is that we have, based on the conversations that I've had, not only with some of you, but other people outside the body or wherever, that we've lowered the threshold now. We've lowered it, we've lowered that threshold on a legitimate public policy discussion, a legitimate public policy argument. We can stand out here and say that we hated LB 748 all we want, but that discussion, we were having it. Senator Landis himself actually said, let's go ahead and

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

adopt the Bourne amendments, and let's take it to a vote. One thing led to another, the thing gets recommitted. I would offer this up: With this whole idea or the direction that we're going, it's now, now at this point in time, where we sit, very much...far easier, to pound bills back across the net, into a committee. That's a game I would...I would throw out the idea that that's a game that's just not that healthy. Keeping in mind that I don't believe that we need to reconsider this, we've lowered the threshold now, and we're in an unhealthy environment. Now that's easy to do with this issue. It's easy to roll us into an unhealthy environment, because LB 748, LB 48, whatever, there's an unpleasant odor about these two bills, natural gas notwithstanding. There's an unpleasant odor, and do the municipals exude that odor? Sure, they do. But there's plenty of stench coming from the investor-owned, okay? Plenty of it. If you don't buy that, go out to the lobby right now and go find out. The stench is out there on both sides. Now, I would...

SENATOR CUDABACK: One minute.

SENATOR FRIEND: ...fire my forehand back at Senator Chambers on this one. The committee did do hard work on these, probably not long enough, probably not enough time. I'm not going to defend my actions, I'm not going to defend the committee's, but what I would say is that if you can grab hold of this issue--and we thought with these two bills that from a public policy standpoint and a statewide standpoint--this argument can be had out here. That was our rationale. Incorrect? You make the call. You're going to have to make the decision on this reconsider, but what I would say is, again, just to reiterate, the threshold is low now. When I see bills out here forever...or however long the citizens of District 10 would like me to be here, I'm going to say, you know what? There's always that option to recommit. Always that option, because we have lowered that bar.

SENATOR CUDABACK: Time, Senator.

SENATOR FRIEND: Thank you, Mr. President.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 748

SENATOR CUDABACK: Thank you, Senator Friend. On with discussion of the motion to recommit. Senator Landis, followed by Senators Bourne, Schimek, and Chambers. Senator Landis.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. Actually, we're in exactly the position where, upon thoughtful reflection, we should be. An undeserving bill which had a provision in it, which at the time of the committee consideration, needed to be talked about, which was the Bellevue situation, in which there were two competing companies trying to get into the same city, and we needed a way to resolve that. There was a reason to put LB 748 out. That's gone away. Now an undeserving bill has been sent back to committee, rather than killed, because otherwise we would have had to have gone through six amendments to get to the same place as a kill motion. An undeserving bill that you heard two hours and couldn't, for the life of you, couldn't come up with a justification or a public policy rationale. I sat here for two hours, and you didn't hear it and I didn't hear it, because it wasn't there, nor was it in Senator Chambers' ten-minute opening, not an ounce of justification for the public policy in LB 748. Several things are wrong with the bill. Number one, one of the provisions is unconstitutional. Another thing is, a different provision violates the Federal Energy Regulatory Commission, the FERC law, on its face. Third, it guts the idea against double-piping, so that's a really bad idea. LB 748 is without merit, once the one problem that it was designed to be sent out here to solve--which was the Bellevue problem--got taken care of, which was done in the private marketplace, between the hearing and today. So what have we done? We have sent an undeserving bill, which for two hours of floor debate had no public justification, and hasn't had it in this case, which is unconstitutional and violative of federal law, we sent it back to committee. Good for us. It was wise to do. The one problem it was designed to solve had been solved, and the other problems, which it was...the bill is rife with, are still there; we sent it back. Now Senator Chambers wants to ladder up. Look, since we treated a bill that doesn't have a strong public policy justification, one that guts double-piping, we should treat the bill that does carry out our public policy, uses standard practices that other states use, we should treat it the same. There is a false similarity. The

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

argument is we should treat them alike, and they're not alike. One bill that is unconstitutional is not the same as a bill that's not unconstitutional. One bill that violates federal law is not the same as a bill that does not violate federal law. One that carries out standard practices of state regulation is not the same as one that guts state regulation. They do not have to be treated alike. We've done exactly right. We spent two hours on an undeserving bill. We discovered that it was undeserving, and we sent it back to the committee. It was the most expeditious way of treating that situation, because we would have had to have gone to a kill motion, which has no priority, after six amendments. We were very expeditious and did the right thing. We did the right thing then, and if I cannot match...if I cannot make a case for LB 48, if there's no public policy, then kill the bill. But LB 748, this body did the right thing, under the circumstances it was in, and if I can't show you why there's good, sound public policy with precedent in other states and the way we now do business in LB 48, if I can't meet that standard, fair enough. But they are not the same, nor should they be treated the same, until you find that LB 48 is wanting. And if it is, then let the fate be whatever you want to do with it. But believe me, it's not the same.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Senator Landis, with all due respect, I am really growing weary of this pontificating. I listened to you on the debate in LB 748, and I listened to you say things that are not accurate. The Bellevue problem--this bill was designed to respond to the lack of response by the investor-owners to communities, particularly Hastings and Central City. I'm unaware of a Bellevue problem. You know, Senator Landis talked extensively on LB 748, and I'll be honest with you, I was duped. On LB 748 I was duped when we discussed this, because I thought we were discussing in good faith what the policy of this state should be, and all it was was an effort by Senator Landis to kill the bill. And that's his prerogative and he can do that; that's fine. But he's talking about a Bellevue problem--that's nonsense. He's talking about double-piping--that's nonsense. He had a map there from

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

1998 that showed double-piping that was put in place or that happened before we passed LB 78, and then he says LB 748 will cause double-piping. He knows that's not true. Then he talks about how it's unconstitutional. Here we are in the 80th day of a legislative session, and this is the first time anybody has said, LB 748 is unconstitutional. Give me a break. We have a legal, or a research analyst that serves the committee, and has for a number of years. I would say there probably isn't anybody that knows gas better than him. He's never mentioned that it's unconstitutional. For Senator Landis, then, to get up and say it violates federal law, again, on the 80th day of the legislative session, that's the first time we've heard that. And you all believe it. I'm really getting frustrated with this. I am trying to solve problems here in the state, and Senator Landis is trying to, in my opinion, be an obstructionist. Listen, the reality is this: The \$500 an hour lobbyist from the gas companies can probably go home now, because LB 748, I can tell you, won't pass this year. But I can promise you that LB 48 will not pass, as well. The lobby is full of these people out here. It's really frustrating to me. I do take a little exception to what Senator Chambers said, and I don't criticize the committee at all. Any of you who have ever served with Senator Landis on a committee, particularly in Executive Sessions, understand what it's like to serve with him. He is a very good negotiator, and I don't believe that Senator Friend or the committee did anything improper by sending both these bills out, but I do think at this point in the legislative session, it's okay to send them both back. I don't know what I'm going to do with the recommit to committee. I do think it was a little inappropriate for Senator Landis to file the motion. I'm operating in good faith, and he's not. And I do want to tell you this: The reason that I'm involved in LB 748, and I've said this to Senator Landis, for several years now he has had some sort of a vendetta or a grudge against the municipal gas company in Omaha. I don't know where this is coming from. I'll tell you this--all of my constituents are served by a metropolitan utility district. To my knowledge they do a good job. I have charts that show they have some of the lowest rates in the entire city. Somehow Senator Landis has some problem with them, and I don't know what it is. But he is trying to put territories on them which will not allow them to



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

grow. I think that's inappropriate. And as I understand it, and I don't want to put words in anybody's mouth, but when the people from MUD would go to Senator Landis and ask him, hey, can we discuss this, he'd say, no, we're not going to discuss this today. Why don't you go talk to the lobbyist for Aquila to discuss whether or not we're going to run this amendment? That's not how this process should work. But what really disappoints and discourages me is that when we discussed LB 748 on General File, I thought we were negotiating in good faith,...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...trying to craft policy that works, and then Senator Landis gets up, who is, as I understand it, the mastermind of a lot of this gas stuff, and if you look at the condemnation process, the 27-point condemnation process we discussed, it's apparent it's not working. Maybe it's time to change bus drivers; I don't know. But I think the reality is, is that LB 748 doesn't go this year, but I'm sure that LB 48 will not go, as well.

SENATOR CUDABACK: Senator Schimek.

SENATOR SCHIMEK: Thank you, Mr. President and members. I think, based on the two previous speakers, you can see why the committee had such a difficult time in dealing with the issue. I would remind you that I did not vote to advance either of the bills from committee, because I knew this would happen on the floor, and I thought that perhaps neither bill would be able to advance, if we didn't try to come to some kind of an understanding and send one bill to the floor. However, we've done that, and my disappointment this morning is that the agenda order for the recommit, or reconsideration motion, and LB 48 are exactly opposite of what they were yesterday. Yesterday I thought to myself, it would be easy to vote to send LB 48 back to the committee, which I am pledged to do, because when I supported the recommitting to committee of LB 748 previously, I said I thought both bills ought to go back to committee and be worked on. So I feel committed to do that, even though I have to tell you up front that I agree with Senator Landis' approach more than I do with Senator Bourne's approach. I still think

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

that this is going to have to be worked out in committee, or neither bill is going to go anywhere this year, as Senator Bourne just said. So I was disappointed. I thought if we could consider Landis' bill first and, perchance, it didn't get committed back to committee, then I probably would have voted for the reconsideration motion, and to bring the Bourne bill back out from committee. I don't...I don't want to play favorites, because my original point was it needed to be worked out. For some reason, then, today the reconsideration motion is up before LB 48, and it kind of screws up that whole scenario, because if I vote to not reconsider the Bourne bill this morning, then we get to LB 48 later today or tomorrow, or whenever it is, and we don't recommit it to committee, then I don't have a chance to undo what we've done to the Bourne bill, and that's not what I wanted to accomplish in the first place. So I...if somebody can help me strategize on how to get out of this, I would be happy to hear from them, but I intend not to vote for the reconsideration motion. I intend to vote to commit LB 48 back to committee. If that doesn't happen, then I think we're in trouble, because I don't think LB 48 will go anywhere this year, either. Now I did speak with the committee Chair just a few minutes ago, to ask him if these bills got put back in committee in a timely fashion, if we could get them back out here in a timely fashion so that they could be taken up this year. It would be probably difficult. I would be willing to work on a weekend or whatever it took to do, to make that happen, but I still don't know if we've got enough time left in the session to do that. So maybe what we're going to come down to in the final analysis, is dealing with it back here in January, after everybody...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...has had a chance to study the issues involved. I hope Senator Friend has got his light on again, so that he can talk about some of those issues. I would, though, make a commitment to both Senators Bourne and Landis, that I would put any hours necessary into it, to get something back out here on the floor this year. So with that, Mr. President, thank you very much.



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 748

SENATOR CUDABACK: Thank you, Senator Schimek. (Visitors introduced.) On with discussion on the motion to reconsider. Senator Chambers.

SENATOR CHAMBERS: Mr. President, I'm enjoying this discussion this morning. I'm watching Senator Bourne assume an aggressive stance; I'm watching Senator Landis get his comeuppance, and this is what ought to happen on the floor of the Legislature when there is an issue as serious and contentious as this one. I think Senator Landis, when he begins to expatiate free, as he does sometimes, he's flush with his success on LB 312, but that doesn't carry over to everything. He and I agree on some things; for example, the rights that ought to be accorded all of our citizens. But then he falls off into the insanity that seems to afflict so much of the world on a bill like LB 312. Then on a bill such as this one, he thinks his view is the one that has to prevail. He certainly couldn't be in favor of Aquila. That had to be a misstatement. With all the financial problems that they are having, the nonutility investments they have made that were stupid, that were speculative, and that flopped, he's too smart to go for a company like that. But I could be mistaken. Maybe he does like Aquila, but I don't. And I don't care how he handles his Exec Sessions and brings bad bills out here, such as Cabela and some of the others, and that bill of Senator Burling's that I thought was atrocious, which we finally got off the agenda. I'm not...I'm not impressed by what the Revenue Committee has done, and I'm not impressed by the way they handle some things on the floor, either. So if we're going to get right down to it and start ripping, slashing, and tearing, I can do that, too, because I've had to do a lot of work because of the bad bills that come out here. And I will not just let them go because they come out of the Revenue Committee, or any other committee, for that matter. Maybe the committee of which Senator Friend is Chair had a rationale that made sense to them in sending both of them out here, but the Legislature would have been better served to have neither of them out here, under the circumstances. So a motion was made to send one of them back to the committee. Well, I'm going to make some motions on the Cabela bill, but they're not going to be successful. But I'm going to harry that bill, I'm going to bait that bill, I'm going to do everything I can to take what little

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

steam out of it it may have. But as for the circumstances that obtain right now, I think LB 48 ought to be sent back. I'm not impressed by or swayed in the least by what Senator Landis said about LB 748. He's advocating a position. There are lobbyists with whom he agrees. There's a company that he favors, or maybe two companies. That happens on the floor. But this is not his committee. He can pontificate, he can "kayjole"--you all say cajole, or whatever else he wants to. It reminds me of this guy who was...his name was Galloway, before this U.S. Congressional committee, and they're used to dealing with cupcakes.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: He told them--because they accused him of some things with reference to that food...oil for food program in Iraq. He said, you...your committee is behaving like a lynch mob. What you've presented is full of schoolboy errors. Mr. Chairman, this is the mother of smoke screens, and put that committee in its place, because they were used to being shown so much respect and deference. And some people in the Legislature get that notion, too, because of the way their committee members fold. But that ain't the way it's going to be everywhere or the rest of the session. So we may as well lay everything out on the table now and battle. And if I can be criticized for leaving during a storm, you all start criticizing some of your chairpeople who are not here to handle bills that come out of their committee. Do it across the board. Let's lay it all out, because we're all grown. And if you haven't got the time, don't be a chairperson. Now, having unburdened my soul,...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: You're welcome. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I just wanted to finish up, and I don't even know if I'll use the entire amount of time, but wanted to point out a couple of things, in relationship to the reconsider, and then I won't belabor it. We're all going...we're all going to do what

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 748

we have to do. We've been down this road before. Like I said, I thought that it was rare that we approach it from this angle. We've lowered the threshold. We're where we're at. But what I wanted to point out, and the reason, I think, we're in the position that we're in, from a public policy standpoint right out--arguing two bills, out here with this mess--is because nobody, in the year-and-a-half to two years that I've been working on these issues, has clearly, specifically identified that there was a problem that required two bills like this. Now I'm not going to throw my hands up and say, hey, Mike Friend is a novice, this is why this happened. But what I would tell you is this: If you don't have a clear identification of a problem, if you haven't established, even a committee--matter of fact, more to the point--especially a committee, because you have a bunch of people telling you there's a problem and not giving you clear indicators, and identifying that problem up front, a group of people can get just as confused as one person can, if not more so. So what we've got are two bills to try to solve a problem that we have not identified yet. Let me quickly explain. Here's the current law, as it relates to what you can do, as a municipally-owned or an investor-owned, as far as laying natural gas pipe, and the Omaha Metro main extensions. Nebraska Revised Statute, 57-1301: In counties where a municipal utilities district and investor-owned natural gas utility both serve, or are attempting to serve, neither entity may extend or enlarge its natural gas mains, unless it's in the public interest to do so. Further, economic feasibility you've got to show. Impact on existing and future ratepayers you've got to indicate. Orderly development has got to be shown. Duplicate or redundant natural gas utility infrastructure--that cannot be done, according to current law right now. I'll elaborate on that. And then, whether the extension or enlargement is applied in a nondiscriminatory manner. MUD and Aquila have been before the PSC Board to deal with these issues in the last six years. Now, there's a prohibition, prohibition on duplicative piping, according to state law right now. You can't do it. No person--and here's the revised statute, 66-1852: No person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure or where a contract has been entered into for the placement of natural gas utility

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 748

infrastructure. Folks, a problem has not been identified. People are saying there's a problem. We got hit, inundated, this committee, with people saying, we have a problem. I bought into it. Last year I'm saying, you know what, we've got a problem. But I'll bet you, absolutely bet you any amount of candy or--we're not supposed to gamble in this state--that I could not have last year identified that problem for you, because current law, everything that Senator Landis has discussed, current law deals with. LB 78 dealt with it. Now, can we deal with LB 78? Maybe that's solving the problem. Maybe that's something that the committee needs to go back and address. But the fact of the matter is, you can't go out and throw out duplicative piping right now. If you do, you're going to get fined, and you're going to have to pull it up, and it's happened, folks. It's happened.

SENATOR CUDABACK: One minute.

SENATOR FRIEND: Do we need service territories? That problem has been tossed out there. We need them, we need them, we need them. Why? Was I naive enough to not be able to ask the appropriate questions? Possibly. I know Senator Landis wasn't naive enough. He thinks we need service territories. Fine. Let's have that argument. I don't believe it. Current law deals with it. I just laid it out. MUD can't go throughout the state and lay pipe down wherever it wants. Neither can Kinder Morgan, neither can Northwestern, neither can Aquila. One more time. Do we have a problem? If Senator Landis can lay that out without going down the duplicative pipe line, then I'll listen. But the fact of the matter is, we're at a point right now where we have to figure out whether we can...

SENATOR CUDABACK: Time, Senator.

SENATOR FRIEND: ...identify the problem. Thank you.

SENATOR CUDABACK: Thank you, Senator Friend. (Visitors introduced.) On with discussion of the Chambers motion. Senator Preister.

SENATOR PREISTER: Thank you, Honorable President, friends all.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

LR 8

I'm not going to support the motion to reconsider, but I do appreciate the dialogue. One thing that Senator Chambers said does kind of perplex me, though. As the person who has stayed off the bill to deal with prairie dogs and who has opposed LR 8CA to provide a constitutional amendment that would give us fishing and hunting and trapping on into infinitum, I guess, and who has opposed killing wild hogs, I didn't understand his statement about why he's going to skin cats. But aside from that--and there being more than one way to deal with gas--I think that Senator Bourne makes some good points and is very intense about making them. Senator Landis has worked on this issue for a long time and has been a negotiator, trying to resolve the issue, and I respect and appreciate that, too. Senator Friend is also very involved in this, as is the committee and the committee staff, who has been for years. We can keep having the discussion on the floor without coming to resolution, or we can commit both bills to committee, and as I said when we were first doing that on LB 748. At this point, I still think that's the best approach. I...that's not to say that Senator Landis has not thought through and is committed to his approach, or that Senator Bourne isn't to his. And I'm not disparaging anyone else, but I think at this point, the best thing we can do is let the committee continue to work on it. The committee has worked on it in the past. The Public Service Commission has worked to resolve some of these conflicts. I think the Public Service Commission still is an appropriate place to mediate some of these concerns and want to continue to see them involved. I'm not totally convinced--although I'm not totally opposed to the idea yet--but I'm not totally convinced that LB 48, in setting up these territories, is in the best interests of the constituents that I represent, and at this point am reluctant to support it. If I'm willing to send one to the committee, I think the committee should deal with all of it. And I understand that there is a commitment to LB 48 and to the things that Senator Landis has been working on. I understand it, I respect it, but right now, I think the committee is the best place for both bills. So for my vote, I'm not going to reconsider, but I am going to vote to send LB 48 back to committee later, also. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Preister. Senator Landis,

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 748

followed by Senator Janssen.

SENATOR LANDIS: Well, we had several more speeches that certainly intensify the rhetoric, but made no case for LB 748. Among the reasons are apparently my arrogance and my failure of being more pleasant or better behaved with respect to a MUD lobbyist. If that's the case, perhaps I owe them an apology, if that's the case. But it doesn't make a case for LB 748; doesn't do it. The fact that things weren't talked about in Senator Bourne's presence doesn't mean that they weren't talked about. He said that there were three things--the constitutionality, the FERC issue, and the Bellevue issue. They've never been brought to light. Well, here's the committee amendment to LB 748. Here is the Bellevue issue I was talking about. You'll find it on page 2, and it's on...it's the number three amendment. It's a committee amendment to Senator Bourne's bill. Except that when such facilities are located within the corporate boundaries or territories of a city of the primary, first, or second class--and by the way, that's Bellevue--or when such facilities are located on property owned and leased by the state (sic), of a primary, first, or second class, the district shall not acquire such facilities by condemnation, unless the city or village adopts a resolution approving such acquisition. It was in the committee amendments. Exactly what I said, it's in the committee amendments. That was the Bellevue problem, and Bellevue has now since solved that problem, so we don't need the committee amendments, and we don't need anything in LB 748. Secondly, with what is unconstitutional in the bill, Senator Bourne wasn't there because he's not in the Executive Session of the committee, it's true. But it certainly did get raised, and it's in the right of first refusal. Can you imagine the state of Nebraska saying that one party has an absolute right to come in and take the position of one of two other parties with respect to a contract, and bump them out of the way and take their part of the contract? You don't think that might be unconstitutional that says, look, if Senator Stuhr and I have an agreement, the law will then give Senator Hudkins the right to bump Senator Stuhr out of the way and take her part in the contract, and require me to go forward with it? That doesn't strike you as maybe violative of the due process clause, or of equal protection under the laws? It's...that would be



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

unconstitutional. If you want the provision that violates FERC, check in the section that tries to assign parts of a...a capacity of a piping system, when the system is taken over by a new owner. It's on page 4 and page 5. You know who controls the transmission of gas through pipelines? It's FERC. It's not Nebraska, and it's not LB 748. Number one, it's unconstitutional; number two, it violates FERC law; and number three, the Bellevue change was in the committee amendments, which were reported out, it's been solved. All those three things were true. If you heard a justification for LB 748, tell me what it was, because I didn't hear any of them. Now Senator Friend made a darn good argument, and that was, you haven't made the case for LB 48. Good speech on exactly that subject. We don't have a problem, and you haven't made a case for it. Fair enough. Let's get to my bill and see if I can. Let's get to my bill and see if I can. And if I can't, fine. I will say this, that under current law, cities have no end to how far they can go with their systems. And that means that double-piping is a possibility. Double-piping is a possibility. It occurred in 1979. It came to an end with LB 78; that's true. And you know what? LB 78 is gutted by two elements of LB 748. One, the thing that says border towns are not subject to LB 78; and secondly, an amendment that there was that said, facilities...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...that are adjacent to border towns aren't...facilities of MUD are also exempt, as well. Put the two together and it guts LB 78. So LB 748, those issues were talked about in committee. They got reported out for one good reason; that reason has been solved in the marketplace. I...if I have a vendetta, I don't know that I have a vendetta. If I've sounded like I've had a vendetta when I say I think it's bad public policy to spend \$400,000 which the Public Service Commission later tells you has no public interest behind it and you have to undo it, if that's a vendetta, then it qualifies. But gosh, a court said exactly the same thing. There was no public policy in the expenditure of \$400,000, and what I say to this body is, can't we do better than that for policy? Can't we solve that problem without spending the 400,000 bucks first, to find out we made a mistake? Because that's the idea that we're

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

trying to do today in LB 48. There...I'm going to put my light on one more time. I'll call the question. By that time we'll have about 45 minutes or an hour on it, mostly...

SENATOR CUDABACK: Time. Time, Senator Landis.

SENATOR LANDIS: ...by those who are for the motion, but I'll put the light on again.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Janssen, followed by Senator Bourne and others.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. In listening to the debate, and...it seems like we've had this every year since I've been here. We've been fighting this same subject between who has the right to serve which cities with their natural gas. Now I...I'm very fortunate that I live in a district where we have some privately owned companies that are servicing some of the smaller towns. We have a large city, also--and I've mentioned this before--that had to go through a catastrophe to find out what was happening with pipes that were...or gas pipes that were put in by privately owned companies, then used it as a bargaining tool, and pawning it all back and forth, and a tragedy came along and finally the city said, we are going to take over this gas company, which they did. And it's been one of the best things that ever happened. A couple of other smaller communities have their own gas company, enjoy some very good rates. Can we come to a consensus on this? I guess we can. We're going to have to. We're going to have to find out which side of the road we want to travel down. I don't know. I would imagine that most of the cities in this state--I hope, anyway--are going to grow. And as they grow, I believe that those...the areas that they annex or the new growth should be served by those, by those publicly owned utility companies. I don't believe that this is going to affect many people in the rural areas. Who in the world is going to want to come out and lay a line out there, that is privately owned? I don't think that's going to happen. I think the big fight here is between, let's face it, MUD and any privately owned company in the city of Omaha. But I think that has started to be resolved, and I believe that we need to, we



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

need to take a good look at LB 748. I think it's on the right track. I know Senator Landis' bill, LB 48, needs...has merit. But to recommit them back to committee, I'm not too sure that that's a very good idea. I think that fight needs to be done here on the floor, and let's get on with it and have the match. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Bourne, followed by Senator Chambers.

SENATOR BOURNE: Thank you, Mr. President, members. Since we're having this discussion now, I'm going to discuss some things. Senator Landis, I listened very carefully to his comments regarding my comments earlier, and I need to provide some corrections. Number one, Senator Landis talks about the amendment to take care of Bellevue. That's not true. That amendment was something I drafted, with the help of the research analyst for the committee, that responded to a concern of Papillion, that the Metropolitan Utility District would somehow come in and condemn Papillion's gas service. So I don't know what Senator Landis is talking about as it relates to Bellevue. The amendment he mentioned was something that I drafted, to respond to a concern of Papillion. Senator Landis talks about how the right of first refusal is unconstitutional. You know what? That point is moot, because if you read the bill and the committee amendment, the right of first refusal is not in there. It is not in there. There is no right of first refusal in the committee amendment. Was it in the bill? Yes, it was, and it was in the bill because we have some private investor-owned utilities that are basically thumbing their noses at the communities when they want to purchase those utilities. So was it in the green copy? Yes. It is not there now. So the unconstitutional thing is of no regard whatsoever. Senator Landis also mentioned that LB 748 is...excuse me, LB 78, which was put in place a number of years ago to stop a double-piping problem, is gone. Not true, not true. LB 78 is not removed or gutted in any regard in this bill, either under the original green copy or in the committee amendment. He also mentioned...Senator Landis also mentioned that it somehow doesn't comply with FERC. Again, not true. The gas people that I'm dealing with tell me that it complies with FERC in every

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

regard. So the constitutionality issue is gone, the federal law issue is gone, the Bellevue thing is...I don't even know what that's about. I drafted that amendment; it has to do with Papillion. And lastly, I want to say that Senator Landis voted the bill out. He voted for this bill out of committee. It came out unanimously. Listen, I wasn't even going to turn my light on. I don't know if it's going to be recommitted to committee or not, and you what? Quite honestly, at the 80th day of the legislative session, I don't know if it matters. But here's why I turned my light on to talk about this one more time. I looked at LB 48 and the amendments and motions filed to that. And Senator Landis has filed a motion on General File, and he's filed a motion on Select File. And if you look at your gadget, you can see what those motions do, but the intent of Senator Landis is to stifle debate. He doesn't want a discussion on this issue, as apparent or evidenced by the motions he's filed on LB 48. I do believe that this is a significant public policy issue. There's a lot of people in our state that use gas. This is important; it matters to them. It's relevant as to their service; it's relevant as to their rates. Senator Landis, by him filing these two amendments or motions on LB 48, has clearly stated he doesn't want any negotiation, he doesn't want to craft the best policy for the state. He simply wants to ram LB 48 down our throats and the throats of the people in this state that receive natural gas service. I find that offensive. Listen, the Speaker asked me to yield some time to him. He wanted to explain procedurally why we're discussing this today, and with that, Mr. President, I will yield the remainder of my time to Speaker Brashear.

SENATOR CUDABACK: Senator Brashear, about a minute, twenty.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. Thank you, Senator Bourne. I thought it might be helpful...Senator Schimek in her discussion made inquiry as to why we were where we are in relationship to the order of LB 748 and LB 48, and I thought it might be helpful to the body, or at least informative, to explain. I had been trying to schedule the reconsideration by Senator Chambers of the recommit to committee motion.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: I'd been trying to schedule it after we debated LB 48. But under our rules, a reconsideration motion expires within...at the end of five days. So I was confronted with the need to respect Senator Chambers' motion to reconsider and to deal fairly with all parties. So please note, in consultation with Senator Landis, who is the sponsor of LB 48, Senator Bourne, who is the sponsor of LB 748, and Senator Chambers, whose reconsideration motion it is, I flipped it, because otherwise, Senator Chambers' reconsideration motion would have expired. I didn't...Senator Schimek said, well, she wasn't criticizing. I didn't take it as criticism, but I think as we look forward to the future and term limits, it's helpful sometimes to explain what goes on in the process and the procedure of facilitating the body's work. So I thank you again, Senator Bourne, for the time.

SENATOR CUDABACK: Thank you, Senator Bourne and Senator Brashear. (Visitors introduced.) On with discussion on the motion to reconsider. Senator Chambers, followed by Senator Mines.

SENATOR CHAMBERS: Mr. President, I was going to make sure I gave Senator Brashear some time, but he had it while Senator Bourne was talking to him. This is an issue that lobbyists are fighting over, and we know that. (Laugh) They usually have the opportunity to look in at us, and we're the show. Look back there. Look at them. Little faces and noses pressed against the windowpane. I bet you could go out there and get DNA samples from some of them. They've pushed so hard that they exuded some juices on that glass. Look at them out there. Don't you all feel like you're in an arena in here? Why, now you know why those animals at Henry Doorly Zoo sometimes growl at you. What are they looking at you for? What do they expect to learn? You're entertainment. Well, let them entertain you all. They make plenty of money. Don't be afraid to look back. Look back there; you won't turn to stone. Look at me looking at them. Okay. Lord, have mercy. (Laughter) Sometimes we need to show these people who the bosses are. But see, I'm not persuasive. They know they can't run me, but they stand there

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 748

looking and nodding to each other--um-hum, but we got the rest of them. We can't get him, but by God, we got the rest of them, and we run them like we want to, and if they cross us, we won't feed them. Those are the ones who feed you all. Look at them. Do you see respect in their eyes? Look at them. Now how can you eat off them, and then expect them not to have the contempt that they have, and feel like they run everything in here, and that what they say goes? Because when you let somebody feed you, they own you, they feel. Now this is a battle between two sides that have been drawn. I'm looking at a letter that came from Hastings Utilities, and the first sentence says, followed by a second sentence: It has come to my attention that some senators have been told that Hastings Utility is currently engaging in "double-piping" of natural gas services. This is simply NOT TRUE! As part of our recent annexations, Hastings Utilities put NO pipe in the ground that would enable us to serve Kinder Morgan customers, until we had explicit permission from Kinder Morgan to lay pipe necessary to transfer customers, as part of our recently negotiated agreement. And on and on. People are defensive; they see the need to explain what they have done, and a lot of it might flow from comments made by senators, or questions put by senators. But for my part, I like the approach that fellow from England, Galloway, had taken to that Congressional Committee. And the British commentator said, it's a lot of rhetoric, but it's not going anywhere. They're not a part of the Justice Department; there are no judicial proceedings in contemplation, so it's just a lot of talk, and it won't...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...mean anything, and won't do anything. And this fellow who in Parliament has never been called a lion, was called by American commentators "the lion of Parliament." And for him to be called a lion surprised people in Britain, because what he did was not lionlike to them. But when you have a Congress which is accustomed to browbeating and bullying people being given their comeuppance and made to see how ignorant they are, how they don't have a basis for the things that they say, American reporters are bedazzled by that. Well, in this Legislature, lobbyists often set the tone and the agenda for

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 748  
LR 184-209

what we do. And in this regard, I want to see that both of these bills are treated the same way. And to the extent that I can, that's what I'm going to do, and there are priority motions that can be put...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Mr. Clerk, items for the record, and I apologize for passing over you last time. Mr. Clerk.

ASSISTANT CLERK: Mr. President, a series of interim study resolutions: LR 184 by Senator Smith; LR 185 by Senator Smith; LR 186 by Senator McDonald; LR 187 by Senator Bourne; LR 188 by Senator Bourne; LR 189 by Senator Stuhr; LR 190 by Senator Beutler; LR 191 by Senator Dwite Pedersen; LR 192 by Senator Pedersen; LR 193, LR 194, LR 195 by the Urban Affairs Committee; LR 196 by Senator Synowiecki; LR 197, LR 198, also by Senator Synowiecki; LR 199, Senator Connealy; LR 200 by Senator Erdman; LR 201, LR 202, LR 203, LR 204, LR 205, all by Senator Erdman; LR 206 by Senator Foley; LR 207 by Senator Friend; LR 208 by Senator Landis; LR 209 by Senator McDonald. (Legislative Journal pages 1599-1614.)

SENATOR CUDABACK: Thank you, Mr. Clerk. On with discussion on the motion to reconsider. Senator Mines.

SENATOR MINES: Mr. President, I call the question.

SENATOR CUDABACK: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on the motion to reconsider? All in favor vote aye; opposed, nay. We're voting on the motion to cease debate on the Chambers motion to reconsider. Have you all voted who care to? Have you all voted who care to? Have you all voted? Senator Mines...did you say something, Senator Mines? Record please, Mr. Clerk.

ASSISTANT CLERK: 26 ayes, 2 nays to cease debate,

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

Mr. President.

SENATOR CUDABACK: Debate does cease. Senator Chambers, you're recognized to close on your motion to reconsider.

SENATOR CHAMBERS: Mr. President, the motion generated the discussion that I was hoping we would have. Some of the senators were in the culture corner asking me why the lobbyists are still standing there, frozen. Well, when I looked at them and they looked at me, they turned to stone. (Laughter) That's what happened. Look at...they haven't moved. One of my colleagues suggested that we form a line across that glass with our nose pressed against it, and just stand there and stare out at them, too, and see what happens. Now, this motion has resulted in some things that had a tinge of anger being said. That doesn't hurt the debate at all. Sometimes you have to get down to that level of a person's emotions to get them to say what is really on their mind. Then we know what it is that we're dealing with. I would not advise people to vote in favor of my motion to reconsider. Let LB 748 remain where that successful motion placed it. But this discussion will let those who are supporting LB 48 know that that bill is not going to have smooth sledding, and that it's not going anywhere. Senator Landis, the great negotiator, the great moderator, has put a series of amendments on his bill, then motions to advance it without any further debate or amendment, which would be a good strategy, if there were not priority motions that can be made ahead of all that. But what it does suggest is that his amendments would put the bill in the kind of shape where any other input is totally unnecessary, and the body should then just fall in line and vote from that point onward to advance it. But Senator Landis knows that that motion is not going to be successful to move a bill like that, without further debate or amendment. I haven't put any priority motions on it yet, because Senator Bourne put one up to recommit it to committee, and I think that ought to be one of the first orders of business on that bill. If that motion is successful, then the two bills have been consigned to limbo for this session, where they belong. If his motion is not successful, then I will begin to offer my priority motions, and I will not be deterred or turned aside by angry looks of frustration by anybody. And I will move

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 748

to reconsider every one of my motions which might happen to be unsuccessful. If Senator Bourne's motion to recommit is unsuccessful, I'm going to be not voting so I can move to reconsider that, and we'll just stay on LB 48, and I'll see how long it will stay on the agenda, in view of how long certain other bills which ran into trouble stayed on the agenda. We have got to find out how things are going to be done. If others are not concerned, that's for them to deal with, but I want to know, because I have a course that I chart to carry me through the last days of the session. And to do that successfully, I have to know what the rules that we're playing by will be. And I don't care what the rules are; I just want to know what they are. And if the rule is going to be that you won't know until it's sprung on you, I'll play by that one, too, because that has shown me what the rule is. In effect, that means there are no rules, and I can really function well in a milieu such as that. I just didn't want...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...those people who thought that Senator Landis' motion, which was successful, was the end of the game; it's not. It might be in a committee, but it's not going to work out here. And if I decide that I'm going to pursue a course of action, I'm going to. Mr. President, I will ask for a call of the house.

SENATOR CUDABACK: There's been a request for a call of the house by Senator Chambers. All in favor of the motion vote aye; all those opposed vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: 26 ayes, 1 nay to go under call, Mr. President.

SENATOR CUDABACK: The motion was successful. The house is under call. All unexcused senators please report to the Chamber. Unauthorized personnel, please leave the floor. The house is under call. All unexcused senators please report to the Chamber. The house is under call. Senator Jensen, will you check in, please. Senator Kopplin, Senator Kruse, Senator Foley, Senator Smith, Senator Synowiecki, Senator Thompson.



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312A, 312, 748

Senator Smith and Senator Kruse, please report to the Chamber. The house is under call. All members are present or accounted for. Mr. Clerk, please read the question before the body.

ASSISTANT CLERK: Mr. President, the question is whether to reconsider the vote to recommit LB 748 to committee.

SENATOR CUDABACK: Thank you, Mr. Clerk. All in favor of the motion as stated vote aye; those opposed vote nay. Have you all voted on the question to reconsider who care to? Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 6 ayes, 26 nays on the motion to reconsider, Mr. President.

SENATOR CUDABACK: The motion to reconsider was not successful. I do raise the call. We now go to the next agenda...Mr. Clerk, do you have any items for the record?

ASSISTANT CLERK: I have no items at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. We now move to the next agenda item, General File appropriations bill. Mr. Clerk, LB 312A.

ASSISTANT CLERK: Mr. President, LB 312A was introduced by Senator Landis. (Read title.) The bill is currently on General File.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Landis, to open on LB 312A.

SENATOR LANDIS: Thank you. This is the A bill to LB 312, which we moved to Final Reading last night. The A bill is an appropriation of \$460,000 from the General Fund, and \$210,000 from the Nebraska Advantage Fund. The \$210,000 would come from the application fees to use LB 312. By the way, we raised the application fees from \$500 to \$5,000, in some cases, that we're going to draw from private sector applicants. In some cases, as low as \$1,500, but in every case, a significant multiple of what we now charge. That's for 2005 and 2006. Then for 2006-2007,



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 312A, 500

it's \$444,000 from the General Fund, and \$210,000 of essentially cash funds from the Nebraska Advantage Fund, created from the application fees generated by users of LB 312. It's the hope that there would probably ultimately be six auditors in 2005 and '06; ten auditors by 2007 and '08, an attorney, two revenue agents, and a clerical position to be supported by this money. I would ask for the advancement of LB 312A.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Landis, I'm assuming your light was left on from the last question? Open for discussion. You turned it back on. Senator Landis, did you wish to...okay. Further discussion? Seeing no lights on, Senator Landis, you're recognized to close.

SENATOR LANDIS: Thank you. This is a relatively hefty A bill for LB 312A, covering the biennium. It draws from two sources, the General Fund and from the Nebraska Advantage Fund, \$460,000 in year one, \$444,000 year two. That's the General Fund implications. I would ask for the advancement of LB 312A.

SENATOR CUDABACK: You've heard the closing on the advancement of LB 312A. The question before the body is, shall LB 312A advance to E & R Initial? All in favor of the motion vote aye; those opposed, nay. The question before the body is advancement of LB 312A. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 31 ayes, 0 nays on the motion to advance the bill, Mr. President.

SENATOR CUDABACK: LB 312A does advance. We now move on to General File. As the agenda states, 2005 Senator priority bills, Cornett Division, Mr. Clerk, LB 500.

ASSISTANT CLERK: Mr. President, LB 500 was introduced by Senator Landis. (Read title.) The bill has been considered previously by the Legislature. There are committee amendments pending. The current item that is under consideration is a motion by Senator Chambers to bracket the bill until June 3.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Landis, would

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

you like to give us a quick review of the contents of LB 500?

SENATOR LANDIS: LB 500 is a STAR bonds bill, a sales tax anticipation revenue bill. It is a mechanism that is tied to, in this case, tourism or entertainment. It has come out of the Revenue Committee. The committee amendments have not been adopted. We are now in the process of a series of priority motions. Senator Chambers is the maker of the one that is before us now, and that is a bracket motion that we opened yesterday afternoon and are still on this morning.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Chambers, would you take a minute and state your bracket motion, if you wish to. Otherwise, we'll go right to discussion.

SENATOR CHAMBERS: I don't need to comment on the bracket motion.

SENATOR CUDABACK: Thank you. Senator Landis. Open for discussion. Senator Landis, followed by Senator Schrock and Senator Chambers. Senator...we'll pass over Senator...no, here he is. I could not see you.

SENATOR LANDIS: Thank you. Excuse me, Senator Cudaback, the order of events was Senator...myself, then Senator Chambers, or is there an intervening senator?

SENATOR CUDABACK: You have given us a review. Now we're open for discussion on the bracket motion.

SENATOR LANDIS: And you just announced three lights in a row, and they are...?

SENATOR CUDABACK: Landis, Schrock, and Chambers.

SENATOR LANDIS: Thank you very much. Maybe we'll get a chance to ask, on the bracket...we were on the bracket last night for about 45 minutes, maybe an hour, at the end of our time. So perhaps we could do some kind of action on this motion before lunch. I want to change the topic slightly from what we've been talking about, because I think the issues are relatively clear

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

with this bill. It will have limited potential users in the two years when the window is open. We know of three people who might want to use it. Cabela's, a baseball park in north Omaha, and an amusement park are the three people out there trying to make things work in a two-year time frame, to make use of this. We know that it's a bond proposal. It allows for 25 years of bonding that that money is spent for a series of development costs, which winds up being a hefty subsidy for whoever uses the bill. The bill is aimed not at normal retail, but at this expanded concept of tourism and entertainment. What I want to move away from is the motion...the thing that Senator Flood said just a moment ago. He said, you know, the last two weeks have seemed like we've been doing reconsiderations of reconsiderations of reconsiderations. And the reason is, we're getting away from majority rule. We're getting away from 25 votes. We're getting to the world where, instead of a majority body, this body, over and over again now, is either threatened or forced into not majority voting, but supermajority voting. And we do it by the use of the rules that we have. That's what's happening now. That's what was threatened in the bill before this, during the debate. If you don't do what I want you to do on this amendment, we're going to go to this extended supermajority debate again. Senator Loudon, you had a bill on prairie dogs. Didn't agree with your bill, didn't want it, didn't care for it, but you were forced to the supermajority. And I voted for that because, even though I disagree with you, if I'm not sufficiently persuasive, and if you are persuasive enough to win, that's the kind of situation that we should be able to live with. Senator Schrock, you had a motion on a constitutional amendment for language I found was irrelevant. I didn't think it was necessary; I don't think there's any threat to hunting and fishing in this body, and I wouldn't vote to do those kinds of things, as well. I was entirely in agreement with Senator Chambers that it was irrelevant. But it went to the majority...not the majority, but the supermajority, of where, as a policy, we're forced to get 33 votes instead of majority voting. It's happened over and over and over again, and it's happening on this bill, as well. We're here now, and the goal is not to persuade our colleagues that we're right or wrong; the goal is to create a blockage of time sufficient that the supermajority has to be created, and

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

that people who don't like the bill, even though in the minority, will continue to not like the bill sufficient to make sure that the majority rule is thrown out the window. Should there be majority and minority situations where that's the case? Well, you know what, I think Senator Foley and I have a gulf between us that neither one of us would be able to close. I don't think that I...he could appeal to me, nor could I appeal to him, across the divide...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...of the moral issues for which we see things differently. I wouldn't ask him...I would ask him, but I wouldn't expect him to join me, from my view of the world. And I think he doesn't expect me to join him for his set of the world. There are a set of issues about which that fight is going to happen, and there's no way to do it. But if we're talking about the kinds of issues that are the common drudge of money, the common drudge of money, or where we don't have the rights of minorities and majorities, like we do in the things that create a gulf between us, if we're not talking about those really intransigent problems, social problems and moral problems, about which rights of minorities and majorities are implicated, I want to raise to the body what's happened, and that is that we are no longer a body of majority voting, if at every turn we have to have cloture votes done.

SENATOR CUDABACK: Time, Senator Landis.

SENATOR LANDIS: Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. On with discussion. Senator Schrock, followed by Senators Chambers, Johnson, Beutler, Loudon, and Landis. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the body, I'm convinced of one thing on this discussion, that if we do nothing, we'll get nothing. I've heard a lot of skeptics, I've heard a lot of pessimists. It's been my experience that skeptics and pessimists don't accomplish much. So if you want nothing to happen, then don't vote for this. I would kind of

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

like to see entertainment kept in Nebraska, I would kind of like to see recreation kept in Nebraska, and I would like to see some of these places become destinations for people. It's not so much for me about people from other states coming to Nebraska, as keeping Nebraskans in this state. Cabela's is a homegrown company. I don't think they've ever asked for anything before. I'm not even sure what their role is in this, but they've been a good company for this state. They draw a lot of tourism to this state in an area of the state that I call very remote. If you go out on I-80 and the Panhandle, most of it is truck traffic. Yes, there's trucks that stop at Cabela's out there, too. I've told you that I'm going to take the grandkids to an amusement park when this session is over. Hey, we don't have a place to go in Nebraska, so we're going to Adventureland in Des Moines. I'd love to stop in Sarpy County. It would save miles; it would be cheaper. And I'm really concerned about Council Bluffs being an entertainment center for eastern Nebraska, and if we don't provide those same type of things when it comes to a water park, amusement parks, and yes, we've got Bass Pro over there across the river, going to build or building--I don't know what stage they're in. I'm sorry, but if we don't do this, Nebraskans are going to spend their entertainment dollars in Kansas City and Des Moines, and if you're in the western part of the state, you're going to go to Denver. That's just the way it is. And I'd rather see them spend that dollars in Nebraska. Yes, the sales tax, three-fourths of it goes back to help finance the projects. But at least they're not spending it in another state, and that's what they're going to do. I don't see how this can be a "lose" situation. Just take a good, close look at it. It's not taking any money up front. Certainly, Cabela's is a Nebraska company. They've put Nebraska on the map. They have two fine stores in this state that they've never asked for one dollar for, and I think it would be excellent to have a facility there. If you've never been down to the one in Kansas City, you can go there and be entertained for half a day and never buy anything. I know there are some of you that don't want to subsidize retail sales. Well, I guess I don't, either, but that's not what this is about. If I was going to build a sporting goods store, I would build it across the street from Cabela's. And by the way, there is a sporting goods store in Kearney that does quite well, and it's not Cabela's. And I see

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

Senator Joel Johnson shaking his head. And when I go fishing, I'm probably going to buy more from that other store. I'll go out to Cabela's and look and I'll price. But if we don't do this, then don't expect to keep Nebraskans home, because they'll go other places for their entertainment dollars, and I'd like to keep them here, and that's what this is all about. And if you've got a better way, if you've got some suggestions for Senator Landis, bring it to him. If you've got a better way to do this, fine, but this is economic development. It's a way to keep our entertainment dollars at home, and I don't have to drive the grandkids so far when I want to do something with them. So, thank you for your time.

SENATOR CUDABACK: Thank you, Senator Schrock. On with discussion, Senator Chambers, followed by Senator Johnson.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Landis and "Emperor" Radcliffe have decided to take the role and the path of the whiner. He thinks that his view of the world is my view of the world, that things which he considers to be unimportant, I should consider to be unimportant. I'm going to use the rules of this Legislature to achieve my legislative purposes. Every session when the rules are adopted, I vote against them, to make it clear they are not my rules, they are Senator Landis' rules. Now he's upset, like they are in Congress, the Senate specifically, because he can't have his whiny way, as "Emperor" Radcliffe wants him to have it. So the "Emperor" has probably talked to some senators and said, support David on this and I'll help you with a bill over here, or something over there. That's what a lobbyist is supposed to do. But Radcliffe knows he doesn't run me, and I don't care what Senator Flood says about reconsiderations, there are going to be more, and he did not discover anything. I told him and everybody else what my intentions are on this bill. And if this motion is not successful, I'm going to move to reconsider it. Then I have another priority motion I'm going to offer, and if it's not successful, I will move to reconsider it, also. Senator Landis went around, talked to Senator Loudon, used child psychology on him. As the man from Britain said, full of these schoolboy errors. Going to use child psychology on Senator Foley, too, and Senator Schrock. Senator Schrock, look how



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

Senator Chambers mistreated you; now vote cloture here. Senator Louden, Senator Chambers likes prairie dogs and you don't; vote for cloture here. Senator Foley, Senator Chambers doesn't like your position on abortion; vote for this cloture. And y'all are going to buy it? Child psychology doesn't even work on children, but he and Radcliffe feel that it will work on the legislators, and we'll have the opportunity to see. But regardless of what happens on General File, I'm going to continue to fight this bill. Senator Pam Brown made a point yesterday that I didn't have the opportunity to deal with, because we ran out of time. She said there's a provision in the bill that will require a 25-mile buffer between one of these operations and any other that might be in competition. Now that's the wrong point to make, because we've been told by everybody that people drive thousands of miles to go to Cabela's, so what would 25 miles be? That's supposed to con us? Which should we believe? That the 25-mile buffer will prevent competition, and that the existing facility will have all of its customers? Or are we to believe that people drive hundreds of miles, bypassing everything else to get to Cabela's? They'll travel that 25 miles, if what we've been told is true, and go to Cabela's, and wipe out all of these other little businesses. No matter how much whining Senator Landis does about Senator Chambers, I'm going to continue to raise the same issues. There are people who can talk about how great this is going to be, but I've heard other times, in other contexts, where if you have one person or one family, you've done the right thing. How about if you preserve one business, or two businesses? You haven't helped them. Is Senator Schrock, is Senator Landis, is Senator Beutler--I don't know if he's on this or not, but he probably favors it, too--willing to put something in the bill to give an amount to every retail...

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: One minute.

SENATOR CHAMBERS: ...establishment within a certain radius of Cabela's? Are they willing to do that? No, because you do not give money to retail establishments, unless it's Cabela's. That's what we're being asked to do, and I'm opposed to it, and



TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

I will fight it. And Senator Landis doesn't like it when I say what I intend to do, but I watched him stand back there and shake his finger in the face of some people and tell them what they were not going to do. So he's a fine one to talk. I watched you. I was right there, okay, and told them what...you're not going to do this. So he knows about that kind of thing. Some people get mad because they can't shake their finger in my face and intimidate me, and get me to go along to get along. Well, let Radcliffe get his cloture vote, but there are other bills that I will deal with.

SPEAKER BRASHEAR: Time.

SENATOR CHAMBERS: Thank you, Mr. President.

SPEAKER BRASHEAR: Thank you, Senator Chambers. Senator Johnson.

SENATOR JOHNSON: Mr. Speaker, members of the body, I'm one of those grandpas, too, that goes to Kansas City. It's a wonderful theme park that you can go to down there, and I highly recommend it to you, without any question, because there isn't such a place in Nebraska. What you've heard me say for the last three years that I've been here is that we have I-80, this river of gold that runs through our state, and we manage to keep the spigots closed on this river of gold that runs through our state. We somehow or other can't bring ourselves to get people to do anything but stop at our free rest stops, maybe buy a can of pop, and be on their way, out of our state. If you'd like to continue the way we are, discouraging the ability to tap this river of gold, then I think you ought to vote against this. On the other hand, if you want to do something dramatic, then this is a pretty good place to start. Over this past weekend, I talked to people that were optimistic about what could happen between the Lincoln and Omaha corridor. I think that this would actually stimulate far more business than the small number of jobs that we may lose, but I really doubt we will lose those. I think what we are on the verge of, as Senator Schrock said, is that Council Bluffs is going to become our entertainment center. So yes, this is a big break for Cabela's. If we don't want to give them that big break, I can assure you there are a half a

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

dozen other states that would gladly take our place in line. Here's a Nebraska company, however, that maybe we ought to do something to help them, rather than discourage them here in our own state. So this is something radically different, but I tell you, when I go to my daughter's place down in Kansas City, I drive right by this unbelievable complex that has been created down there by a bill very similar to this, and maybe we ought to jump aboard the winning horse here at the same time. Thank you very much.

SPEAKER BRASHEAR: Thank you, Senator Johnson. Senator Beutler.

SENATOR BEUTLER: Senator Brashear, members of the Legislature, I know we're running out of time this morning, but I want to start a little bit more of a conversation on the aspect of this bill that has to do with competition at the retail level, because I know it is a concern for all of us, including myself. And we need to think through a little bit, and I'm kind of speaking aloud and thinking through the process myself a little bit, in terms of how we want to handle it in this particular case, and maybe starting with a discussion of how we've handled it in past cases. I'm not going to have time to discuss all this in one or two or maybe even three chances, but I want to start out, at least, the conversation. And if you start out at the local level, you and I are both aware of a number of economic incentive benefits that can be given at the local level to encourage companies of one type or another to develop a blighted area, or to be a part of an industrial park, one thing or another. And if you're looking at the question of retail competition, what is done, for example, with TIF financing, tax increment financing? That's probably the largest, most widely spread tool that we use. And I think you're all aware of situations where TIF financing does, in fact, come into competition at the retail level. Here in Lincoln, for example, I know right now, one of the things going on is the massive redevelopment of the 48th and O Street area. We're going to spend other people's property taxes. We're going to siphon off property taxes and use it to benefit businesses, most of which will be retail in that area. And I can assure you that some of those are going to be in competition with many other retail businesses in that area. It is a matter that we leave to the

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

local area, to have a discussion on it at the local area, and to balance out the interests at the local area and make a decision. Because it's not the sort of thing that you can just, per se, decide--nothing can be in competition with other retail businesses. Otherwise, you don't get the major kinds of urban advancement that both Omaha and Lincoln, and I know Kearney and many other cities have been able to make, because they've been able to use TIF financing to support retail operations. So I'm going to stop right there with just that thought. Competition at the retail level goes on at our local level of government, with their incentives, all the time. Thank you.

SPEAKER BRASHEAR: Thank you, Senator Beutler. Senator Louden.

SENATOR LOUDEN: Thank you, Mr. Speaker, and members of the Legislature. As I stated before, I don't have any problem with this bill and what they're trying to do, to have some type of a destination point or whatever it is they want to build, whether you want to call it tourism or entertainment, and...or whatever, however they go about it. The problem I have is the way we're doing it, by taking funds out of our state sales tax to help promote this thing. I think there's a better way they could probably be doing it. I question...with those counties involved--I think there's about six counties down there, in and around Omaha, and how much money are they getting out of their tourism fund? I know that Lancaster County is talking about \$900,000 a year out of their fund, and they're having some debate on who gets to spend that money. So in those counties there, if they have a tourism fund, then why not, isn't that money being used to help fund some of this bonding? Also, their 1.5 percent sales tax out of the area that they...their destination point, is what is supposed to be used for that, is some more funding. If this is a good deal for those areas, some of those towns could set aside a half percent or something like that. What you're talking about, by taking 75 percent of the sales tax that comes out of this zone is, you're cutting the state sales tax down to about a little...just a little under 1.5 percent, and the state is funding the other little over 4 percent sales tax to fund this project out of the state General Fund money that would be going to the state. I think there's better ways of doing it than the way you have, funding

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

it. This is something local that would no doubt help that area. It would help other parts of Nebraska. I think that this, as far as recommitting or bracketing the thing, either way, whatever it takes to fine-tune that thing and bring it up to shape and find a better way to finance it. This...there's going to be other expense that goes with funding this that the state of Nebraska will have to pick up, such as I mentioned before, when you was trying to tell me where the place was located. I'm sure there's going to be access routes and off ramps and that sort of thing, if it's next to Interstate 80. So there's going to be a lot of other funding that the state of Nebraska will have to pick up and probably do it, in order to have any access to these places. If you're going to have the amount of people show up to these enterprise areas, it's going to have to have some traffic work done. Same way as out in Sidney, when Cabela's built and all that, there's huge interchanges and a lot of concrete work, a lot of access routes done out there, and I'm sure the state of Nebraska picked up the lion's share of all of that, to get off the interstate to Sidney and to Cabela's, and to the other businesses that have located out there, along with Cabela's, and also with their depot that they have for some of their parts out there. So I think there's better ways of funding this thing, and also, when you're talking about wherever Cabela's is located, nobody has ever mentioned there's one right up here in Mitchell, South Dakota, that isn't that far away, so you don't have to go to Kansas City. They have Cabela's stores around in several areas, and I think one in Omaha would be a fine addition to what we have there, or in the Omaha area, on the interstate. I have no problem with it. I think this is something that could be brought forward. My problem is the way it's funded, and I think there are better ways of funding this than what you've decided to use. With that, I hope that if this is bracketed, why...or recommitted to committee, or however you want to do it, but I think it needs to be...

SPEAKER BRASHEAR: One minute.

SENATOR LOUDEN: ...rethought and a better procedure needs to be brought forwards on how to fund the thing. Thank you.

SPEAKER BRASHEAR: Thank you, Senator Louden. (Visitors

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

introduced.) Senator Landis.

SENATOR LANDIS: I call the question.

SPEAKER BRASHEAR: The question has been called. Do I see five hands? I see five hands. The question before you is calling the question. All those in favor signify by voting aye; those opposed, nay. Have you all voted? Senator Landis, for what purpose do you rise?

SENATOR LANDIS: In the event it becomes necessary, I would like to ask for the Chair to entertain the thought of a call of the house on this issue.

SPEAKER BRASHEAR: There has been a request for a call of the house. All those in favor of a call of the house, signify by voting aye; those opposed, nay. Senator Landis has indicated he will accept call-ins. Members, we are...Mr. Clerk, will you record, please.

ASSISTANT CLERK: 32 ayes, 0 nays, to go under call, Mr. President.

SPEAKER BRASHEAR: Thank you. The house is under call. Will all members absent from the Chamber, please report to the Chamber. Will all unauthorized guests please leave the floor of the Chamber. The house is under call. Senator Landis has indicated that he will accept call-in votes on the motion to call the question. Senators Bourne, Kremer, Kruse, Cudaback, and Johnson, the house is under call. Please report to the Chamber. Mr. Clerk, Senator Landis has authorized call-in votes.

ASSISTANT CLERK: Senator Cudaback voting yes. Senator Baker voting yes.

SPEAKER BRASHEAR: Please record.

CLERK: 25 ayes, 2 nays to cease debate, Mr. President.

SENATOR BRASHEAR: Thank you, Mr. Clerk. The question has been

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 90, 312, 500

called. Senator Chambers, you are recognized to close on your bracket motion.

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. Cabela's is the reason for this bill. There's no question about it. I had mentioned an article in yesterday's Journal Star. It pointed out that Cabela's is a publicly traded company, and one of their top men acknowledged that they could not build these stores in the way they are doing without public financing. There are other stores which could not compete with them without public financing, but they're not going to get it. Cabela's is the one trying to get it. Senator Loudon had suggested how these locales, where this monstrosity will locate, could find a way to come up with the money, if they chose to do so. But instead, the state's treasury is to be plundered. That has already happened with LB 312, and the accompanying LB 90. There's a point beyond which the taxpayers' money should not be spent inappropriately. Reading from that article yesterday, one reason Cabela's is able to sustain the rapid growth of the megastores--that sounds something like they're talking about Wal-Mart--which are then pitched as tourist attractions, is the public financing the company receives. It's a situation that galls competitor Poet, a person in Michigan who is all but annihilated by Cabela, and that Callahan recognizes as a key to the company's business strategy. Quote from Callahan: We probably would not be building the size of stores we are, with the amenities we have, if it were not for the public financing, and if we lost the amenities, we might lose that draw as a tourist attraction. I don't blame these greedy business operations for exploiting these legislators who are so easily persuaded or bludgeoned into succumbing to the siren song of these greedy commercial operations. Will you give Wal-Mart some money, if they would agree to build in their parking lot a large fountain that would have different-colored lights on it, would make people come and look at it, and that's a tourist attraction? Will you give Wal-Mart some money? Why only one retail establishment? It's clear, because they have the strongest lobbyist--well, that might offend others--in the state pushing it. That's why it has come as far as it has, that's why it has taken the time it has taken, and being given the time it is being given. I'd like to ask Senator Engel a question,



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 90, 312, 500

because I think he has...he may not, but I'm going to ask him.

SPEAKER BRASHEAR: Senator Engel, will you yield?

SENATOR ENGEL: Yes, I will.

SENATOR CHAMBERS: Senator Engel, do you have any conversations with the Governor?

SENATOR ENGEL: Yes, I do.

SENATOR CHAMBERS: Have you talked to him about this bill?

SENATOR ENGEL: No, I have not.

SENATOR CHAMBERS: Thank you, then you cannot give me an answer. This bill may be supported by the Governor, maybe it's not. But you know he's going to sign those giveaway bills--LB 312 and LB 90. How about this one?

SPEAKER BRASHEAR: One minute.

SENATOR CHAMBERS: I wonder how this will play in his upcoming election--killing off individual businesses, when Osborne is talking about helping the economy and all these little businesses and such things as that. We speculate, and I'm speculating, but I intend to continue talking about this bill, and Senator Beutler will have the opportunity to develop his point, with some additional opportunities to talk. I like to create opportunities for others, which they won't create for themselves. But he may have something of value to contribute to the discussion. Mr. President, I will ask for a roll call vote.

SPEAKER BRASHEAR: Thank you, Senator Chambers. You've heard the closing by Senator Chambers on the bracket motion which would bracket LB 500 until June 3, 2005. Mr. Clerk, please call the roll.

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1614-1615.) The vote is 7 ayes, 22 nays, on the motion to bracket, Mr. President.



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005                      LB 48, 70, 237, 332, 421-427, 484, 500, 737  
                                    LR 65, 110, 111, 210, 211-222

SPEAKER BRASHEAR:            The motion to bracket is not adopted. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR 110 and LR 111. Also, I propose to sign and do hereby sign LB 737, LB 421, LB 422, LB 423, LB 424, LB 425, LB 426, and LB 427. Mr. Clerk. (Legislative Journal page 1615.)

ASSISTANT CLERK:    Mr. President, a series of items for the record. Motion to legislative bill to be printed, offered by Senator Landis (re LB 48). Senator Smith has amendment to LB 70; Senator Cunningham to LB 484 and LB 237. The Committee on Health and Human Services reports LR 65 to the full Legislature for further consideration. A series of reports on gubernatorial appointments offered by Health and Human Services. An Attorney General's Opinion addressed to Senators McDonald and Janssen (re LB 332). Additional interim study resolutions: LR 210 by Senator Schimek; LR 211 by Senator Bourne; LR 212 by Senator Howard; LR 213 by Senator Synowiecki; LR 214, Senator Kruse; LR 215 Business and Labor; LR 216 by Senator Landis; LR 217 by Senator Wehrbein; LR 218 by Senator Redfield; LR 219, LR 220, LR 221, and LR 222 by Senator Bourne. (Legislative Journal pages 1615-1630.)

Mr. President, I have a priority motion. Senator Price would move to recess until 1:30 p.m.

SPEAKER BRASHEAR:    The motion is to recess. All those in favor signify by saying aye; those opposed, nay. We are in recess. Thank you.

RECESS

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK:    Good afternoon. Welcome to the George W. Norris Legislative Chamber. Senators, the afternoon session is

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 90, 312, 312A, 421-427, 500, 737

about to reconvene. Please check in. Record please, Mr. Clerk.

ASSISTANT CLERK: There is a quorum present, Mr. President.

SENATOR CUDABACK: We return to General File, 2005 senator priority bills. Mr. Clerk, LB 500...items for the record, Mr. Clerk?

ASSISTANT CLERK: Mr. President, one item. The bills that were read on Final Reading this morning, the appropriations bills, were presented to the Governor at 12:15 this afternoon. (re LB 737, LB 421, LB 422, LB 423, LB 424, LB 425, LB 426, and LB 427.) (Legislative Journal page 1631.)

Mr. President, as it relates to LB 500, prior to recess, the Legislature had considered a motion to bracket LB 500 until June 3. That motion failed. Senator Chambers would move to reconsider that vote.

SENATOR CUDABACK: Senator Chambers, you're recognized to open on your reconsideration motion.

SENATOR CHAMBERS: Thank you. Mr. President, in an attempt to be collegial, I will just withdraw LB 500. (Laughter) Oh, somebody was listening. That was intended to be received in the way that it was. But on the chance that nobody was listening, Mr. President, members of the Legislature, it's clear this bill is going to go the eight hours. And I don't know whether or not a motion to cloture the bill will be made. But when I look at the headline in yesterday's Journal-Star, it says "Cabela's has been very smart." I don't know whether those who are pushing this bill have been very smart, and whether their motion to invoke cloture will be very smart. It would certainly not be a good thing for the Legislature. I'm going to mention briefly again what the Legislature has done. It has given away more million dollars...millions of dollars in incentives that I can total up in LB 312. Senator Landis brought LB 312A this morning, which threw in what might be considered pocket change compared to all that the underlying bill will steal from the treasury. LB 90, a tagalong bill, which involves additional millions of dollars, is going to be enacted. There should be a

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

line drawn. And if that line is drawn--I will paraphrase something Senator Redfield said the other day--enough is enough. But she was talking about a \$15 million raiding of the rainy day fund, which, by the way, sprang a leak because of that. How has Cabela's been very smart? They have sized up legislatures and the members who make them up. They decided that here is a soft, easy mark. And a multinational, from what I've heard, corporation is able to sucker these legislatures into giving them money, incentives, tax breaks that they don't even need. The poor have always been so lacking in self-esteem that they will stampede to help the rich, who not only don't need them, but do not respect them. When legislators fall all over themselves praising business, just throwing money at these businesses--which, by the way, does not come out of their pocket, but comes out of the pockets of the citizens--they feel somehow that that ingratiates them with these big businesses. The only use they have of and for the Legislature is to use the Legislature. This article contains a statement by a person in Michigan, where this was done, who says that the Michigan politicians are still trying to clean their hands of what they did six years ago. Legislators get stampeded into doing things. This need not be done. These last ten days of the session do not have to be days of infamy. Cabela's is not going to go out of business. They do not need any assistance from this state in the form of a plundering of the revenue stream that people always use...the term, that is. So Cabela's will get some pinhead county board to put together a bonding authority. They'll issue these bonds. And Cabela's will be there like a ravenous hippopotamus, mouth wide open at the bottom of this funnel. The bonds will be dropped into the funnel. Cabela's will consume those bonds, its own bonds. And then money that the taxpayers would pay into the treasury by way of sales tax will be consumed by Cabela's to retire its own bonds, which, because they were issued by this public authority, will be tax-free as far as the interest. And the interest will be coming to Cabela's, on the bonds, from sales tax money. So they make money coming and going, and they don't need it. They're laughing now, and I don't blame them. That old trickster-huckster said, there's a sucker born every minute, and if you find one, bump his head. And that's what's being done to the Legislature. You've done the damage that business told you

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

this session was about, and which you were instructed and ordered to do. You've carried out those orders to precision. You've done a good job as far as they're concerned. You've given them more than they could have expected to receive. They didn't think they were going to get everything. They asked for more than what they thought they would get, and they got it all. Now we come back to give away even more. But I'll venture to say, the senators who are voting these giveaways do not boast about these things when they run for reelection. Now, they might talk about how they supported economic development, as they call it. But they're not going to go into detail about how much tax money is going to be taken out of the state's revenue stream and help account thereby for the high taxes that other people pay. Whenever we come to the budget consideration, I hear people, even those who call themselves conservatives, saying they don't want to make deep cuts in the university, in aid to education, in these various programs that are considered necessary, or entitlements. They don't want to cut, and they don't want to raise taxes. Then they go over here and take from the revenue bucket of the state huge amounts of money. But in order to maintain services, the university, and these other governmental functions, money is needed. As you reduce the number of people paying the taxes, you increase the amount that each one is going to have to pay. So why will people stand on this floor and hypocritically condemn Nebraska for having such high taxes, then vote to take away some of the taxpaying base? That doesn't make sense. There used to be a Revenue Committee worthy of the name, that was concerned about not shrinking the state's revenue base. Those days are long gone. Long gone. They existed prior to the entry of some of my colleagues into the Legislature, so they will never be aware of how that committee functioned. Bills could not just fly in there, when the bills were crazy, and then be advanced to the floor. Even some good bills, that were plausible, that had a logical rationale, would get hung up in that committee and not come out here. But when one did come out here, you could believe that at least they had combed it over, thought about it, worked their way through it. And I...

SENATOR CUDABACK: One minute.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

SENATOR CHAMBERS: ...did not agree with all those bills that came out here. But I did not get the impression that a slipshod, careless job had been done, and the committee had been buffaloeed by a particular lobbyist. Those days are gone. And here we are with this bad bill. And I'm doing what I can, in my little way, to discourage the Legislature from taking this step, which is unwise, imprudent, unjustified. So I will continue, as long as I have means at my disposal, to fight against this bill, until we reach showdown time. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the motion...reconsideration motion by Senator Chambers. Senator Landis, followed by Senators Janssen, Jensen, Kopplin, Flood, Redfield, and seven others. Senator Landis.

SENATOR LANDIS: Thank you, Mr. Speaker. We use these opportunities to talk about the bill, because of course it's not really a talk about reconsideration. This is a delaying tactic. It's a tool used to design...designed to use the clock to defeat majority rule. And so we use this as a chance to talk about the failings of the Revenue Committee, or the virtues of the bill, or the like, because we don't talk about whether or not we missed some piece of information for a reconsideration, or if there was, you know, a problem with attendance, or whatever, or some new information. We use this as the new tool to defeat majority rule in this body. And that's what we're doing. Senator Chambers said, you know, let's just not go to cloture. Cloture is not good for the state, it's not good for the Legislature...he didn't say the state, he said, it's not good for the Legislature. Let's just not. I think that's a great idea. Let's work through the amendments and vote on the bill. I would...there's no doubt that Senator Chambers has no question as to the courage of his will, but not the courage of his ideas. If he had courage...if he had the courage of his ideas, he would let it operate in the marketplace of ideas, and operate on the strength of themselves, see whether he could be persuasive or not, see whether he could convince us that it was a good idea or a bad idea. That's not where this lies. It lies in the absolute and admirable courage of his will, but not in the courage of his ideas, because he doesn't have the courage of his ideas. Otherwise, he'd put them on the table and feel

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

comfortable that he could persuade his colleagues to do as he thought was right, rather than, as he so often says, makes them do it by using the rules. Well, I've got a...I suffer the difficulty of trying to persuade you that what I'm doing is something that is persuasive, not just as a matter of compulsion. Look, one of the arguments that we're making here is, you know, to take an income stream and to use it for economic development purposes, tourism, attraction of retail, hmm, might do it for some, don't want to do it for others, there's some kind of a magic wall there that we don't want to cross over. And by the way, I think we should cross over, see what it's like, slam the window, and then evaluate where we are. That's my theory. However, for those of you who say, you know, we really shouldn't do that, let's ask ourselves about our existing TIF rules, which is, what? The distribution of, "A," an income stream, towards a particular project. In Adams County, in Hastings, the Brant redevelopment project, the Country Stores General Partnership, the Fridley Theaters, the Walgreens, and the EZ Kitchens--all retail developments, all using TIF. Buffalo County, the NAPA auto parts store--TIF. The True Value in Ravenna--TIF. The Arby's restaurants in Cheyenne County--TIF. The Dollar General Store in Broken Bow--"TIFed." The farmers co-op in Gothenburg, the auto parts store in Gothenburg--"TIFed." The Stockyards Plaza, the Spaghetti Building...Spaghetti Works building, the Robinson Seed Company in Douglas County--"TIFed." Ogallala, the Burger King, the Prokops' barbecue restaurant. We've taken the income stream, and we're supporting the TIF program there. It's not as if we haven't done something in this area. Lancaster County, believe me, we've done it. The Grand Theater, the Havelock area redevelopment, my area of town, North 27th Street redevelopment, Applebee's--all examples of using an income stream for the purpose of assisting in the creation of, in these cases, retail ventures.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: Hy-Vee redevelopment in Madison County, the General Store...the Dollar General Store in Morrill County. In Nemaha, the city of Auburn redevelopment area--Courthouse Square and downtown buildings. Phelps County, the Sonic Drive-In, the



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

Bosselman project, the Family Dollar Store, the West Fourth Avenue retail store. In Platte County, the Village Addition Shopping Center--all using an income stream for the purpose of creating opportunity and development. Now, the standards here are higher. What we ask in return is higher. The payoff to the state will ultimately be higher. But as far as crossing some magic line, we've crossed it. We've been there, we've done it. And by the way, the return on investment here is very high. At some point, I hope that we'll call the question on reconsidering the motion, and get on to the bill. How about that? A novel idea. How about the amendments from the floor as the topic for what we should be talking about? I'll put my light on, and see if I can't see if we can move towards talking about the bill itself.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Janssen, followed by Senator Jensen and others.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. I still stand before you saying this is a bad idea. You know, before someone--a company, Cabela's--before they decide on a location, you know, I'm sure, as big as this company is, that they'll study a location to see whether it's feasible to put a retail outlet in that particular area. We all know that the metropolitan area of Omaha is growing by leaps and bounds. Pretty soon, they're going to be reaching the Elkhorn River and Dodge County. You know, they even cross county lines. I...but this company is so large, and I'm sure that they have got economists studying the situation, and they wouldn't think of locating a retail store in an area that didn't have the potential to make them some money. It's a great company. They have a lot of enthusiasm in their business. And why shouldn't they? They came from tying fishing hooks with feathers on them in a small garage. And I commend them for that. And no, they wouldn't be coming to an area that hasn't been tested and hasn't been thought out on how much money can be made there, or whether the traffic would allow that. Senator Johnson talked about the golden road that goes through this state. It is. And that road comes pretty darn close to the area they want to locate in. Millions and millions of cars, trucks. In the summertime, you know, there are people going from one end of this country to the



TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

other. They take I-80. So we do have a golden road coming through there. And that's the reason that they want to locate along that golden road. They've been in business a long time, and they have, I'm sure, people working for them who study this, to pick out a location that would be profitable to them. If we don't allow this to happen, I'm sure that someone will locate in that area. May not be Cabela's. If there's some other company that is similar to them, which, you know, there aren't too many that are similar to Cabela's, but let's do it the American way, and not ask for a handout. Those tax dollars that will be lost to help a company, we may need those. We may...it looks pretty good right now, but we may need those in a couple of years. And this is going to go on for a long time. Those dollars will keep flowing into the pockets of retailers to help them build buildings. And I just don't think that's right. That...if we're going to do this, let's do it for everybody, and then see what happens to your tax base. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. I do support LB 500. I'm rather a simple person, and when I look at issues--and my wife will tell you this--I'll usually pull out a legal pad, and I'll put a line right down the middle, and I put the pros and I put the cons...I put the pros on one side, the cons on the other side, and I start listing. And then I go through and make a decision on what is the best thing to do on that particular issue, whatever that might be. And I do that if it's buying a car, or buying a building, whatever. I go through this very simple process. I didn't do that when I decided to get married. (Laughter) But from that time on, I have. But...so I go through this, and I call it the "what ifs." And what if we don't do this? What happens? Well, first of all, I think we've missed a tremendous opportunity. You know, for years I've been here, particularly on the gambling debates, and just saying that we have to have gambling because all the money is going over to Iowa. Well, Bass Pro Shop are building a building in Council Bluffs, and they're building that building because, it's my understanding, they received \$15 million in some sort of a subsidy to do that. And so if we don't do that, again, Nebraska dollars are going to Iowa. And

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

I'll probably be one of those that will go over there and use that facility. So we are giving more of our revenue to Council Bluffs, or to Iowa. And then again, what does it cost us if we pass LB 500? It's revenue, it's taxes, that we don't have today. So we're not eliminating taxes that are on our books. But we have an opportunity to get a piece of some sales taxes that, under any other circumstance I don't think it will happen. So we're losing that. And I have always said I'd rather have a small piece of something than all of something else, as long as it is maintained. So one of those "what ifs" is, what if Cabela's don't come? And I think they've already stated in the paper that without this, that they will not. And so here we have a major retailer in the state of Nebraska that we are saying no to. And I think that's bad any time that we do that, for any business in Nebraska, to say that we don't need them anymore. You know, Cabela's could move their whole operation somewhere else, as far as that goes. I think it's very important that we send a message to them, we appreciate their business, we want them to expand, this is what we're willing to do for you. Then it's not only Cabela's. Perhaps there's a theme park. And my goodness, the state of Nebraska sure could use a destination park for not only its citizens, for also all of those people who are, yes, as Senator Johnson says, going up and down Interstate 80. It's a long road across the state of Nebraska. And I think we need to make every opportunity that we can to have people turn off that Interstate 80 and turn off into a situation or a facility that could help with the state. Now, you always got all these trailer industries that will follow someone like Cabela's or a major retailer. You know, if you're building a shopping center, what you want is you want that big box store, that big draw, and then all the rest will come. You get the beauty shops, you get the...all those...the drug store, all those little stores, the shoe store,...

SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...that always come along with that main name. Then also, I think we're going to miss a lot of tourism dollars if we don't provide some way, some reason for people to pull off. Now, I do differ with Senator Landis as far as the

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

cloture. I always look at this time, Senator Chambers, as bonding time that we can have here in the Legislature. And if we want to do something about that process, why, then, the time to do that is in the rules that comes at the beginning of every session. But when I look at that list of, what if we don't pass this, and what if we do, as far as I'm concerned, it comes down on the side of, I think this is a good opportunity for us. Yes, we're getting a smaller percentage of taxes, of tax revenue, sales tax revenue. But we're getting some. And we'll continue to get some. And I think with all the trailer industries around it, it's going to be a lot more. We're going to get housing, via...

SENATOR CUDABACK: Time, Senator Jensen.

SENATOR JENSEN: ...motels,...thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. On with discussion. Senator Kopplin, followed by Senator Flood.

SENATOR KOPPLIN: Call the question.

SENATOR CUDABACK: The question has been called. Do I see five hands? Senator Chambers.

SENATOR CHAMBERS: I'm going to object this time. If you rule that there's been enough debate, then I'm not going to try to overrule you. But I'm seeing a trend developing, and I'll play that game. I think there hasn't been enough debate. And I wish Senator Brashear was in the Chair at the time. And if he hears my voice, I wish he'd come up here.

SENATOR CUDABACK: I am going to rule that there are 13 more lights on, there's only been 4 to speak, that there hasn't enough discussion, according to the rule. So you're call of the question is overruled. Next speaker, Senator Flood.

SENATOR FLOOD: Mr. President, members, I rise in support of LB 500. And I want to commend Senator Landis and Senator Kopplin for putting together a bill that I think looks outside the box at solutions to our ever-lagging problem when it comes

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

to tourism in the state of Nebraska. We are one of the states that obviously is at the bottom of the barrel when it comes to tourism in the Midwest. In comparison to other East Coast and West Coast states, we don't fare well at all. I only wish that Madison County, or someone in my district, had thought of an idea like this, so that we could employ the same in Madison County. Fact is, this is a great two-year experiment. This doesn't go forever and ever and ever. This is two years, to see what it does. And if it doesn't work, it won't happen again. And the losses that will be spread around I'm sure will affect the business a lot more than it affects the state. I enjoyed Senator Jensen's speech. I was going to talk about the "why not's." If this is a Cabela's bill, why not do it? Why not do something for a Nebraska-based company? Why not give this a shot? The only thing we stand to lose is the sales tax revenue that we won't get if we don't pass it. It's the great two-year experiment, and it's worth trying. Some may ask, well, why would a rural senator go to bat for something that's targeted to Sarpy County or Douglas County? I have been frustrated at times when I get the feeling from other rural senators that if it's good for Omaha then it can't be good for the rest of us in rural Nebraska. Well, I commend the people in Sarpy County for coming up with the idea in the first place. And secondly, if it's good for Omaha, it's good for rural Nebraska. People in Douglas County pay their fair share of taxes. And while other rural senators stand up and want a handout on property taxes, some of that money is going to come from Omaha. Bottom line, Omaha pays its fair share, they recognize this as something that will benefit their area, and I'm supportive. I'm voting for this. If it works, I can only imagine we'll see it employed across the rest of the state and in the rural areas in the next ten years. And when you consider that we base our entire tourism budget on the state of Nebraska on a 1 percent share of the lodging and revenue tax statewide, this is aggressive tourism marketing. And I believe it's good for Nebraska, it's good for Sarpy County, good for Douglas County. And I think it's a green vote for Madison County. I'd like to yield the rest of my time to Senator Landis.

SENATOR CUDABACK: Senator Landis, about two minutes.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

SENATOR LANDIS: Senator Chambers is right to think that I've asked my colleagues to consider calling the question. I am responsible for that. And there are 13 lights on. The question is, what do the 13 lights want to talk about--the bill, or the reconsideration? Why are the lights on? Senator Stuthman, is it that we're going to argue about that reconsideration is appropriate, or whether the bill is appropriate? Senator Redfield, are you going to talk about how we haven't talked enough about the issue and we need to reconsider, or are you going to talk about the bill itself? Is that true for Senator Beutler, Senator Friend? Senator Friend, is it...are we going to argue about the need to reconsider the bracket motion, or do you want to talk about the bill? My desire here to call the question is so that in fact we can take what has been four hours of priority motion debate, and get to the bill. And the 13 lights that are on are there to talk about the bill. So if the topic is the reconsideration, fair enough. For those of you who want to talk about the reconsideration, leave your lights on and make that the topic. But what's happening is, we get 13 lights because they really want to talk about the bill,...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...and then, if we ask to call the question, oh, there's an objection because we're not focusing on reconsideration. Has there been a word on the need to revote because there was a procedural flaw or an erroneous flaw of information? No. The contact has been about the bill. In which case, that's the topic we should be talking about. In which case, a call of the question on this motion so that we could then talk about the Redfield amendment, the Howard amendment, the Beutler amendment, the Chambers amendments if there are any, the committee amendments, is the appropriate thing to do. Thirteen lights are on, but I don't think they're there to talk about how a reconsideration is the appropriate thing to do at the moment. I think they're there because they want to talk about the bill. And the way to do that is to call the question on this motion, designed to delay. You've heard Senator Chambers. He's announced that he will use any tool in this thing. He's announced that delay is his tool. He's announced that he's trying to push this to cloture. So it's

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

about the clock. And this is a tool to use it.

SENATOR CUDABACK: Time, Senator Landis.

SENATOR LANDIS: But we want to talk about the bill.

SENATOR CUDABACK: Thank you, Senator Landis. (Visitors introduced.) On with discussion, Senator Redfield, followed by Senator Stuthman.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I am going to talk about the bill, because we have actually had some discussions on this topic last night and the other day, and certainly in the Revenue Committee we've talked about the bill. And as I've been wrestling through some of the issues, I've been asking myself the question as to where I think we should go. And I think that the handout that we have from Senator Landis on the TIF financing actually begs another question as to why the TIF financing mechanism that we have is not sufficient. I believe that that is what Cabela's has used for a number of the projects that they have built in some of the other states. But the bill that is before us here is actually patterned after the Kansas law which created the STAR bonds. And I understand that Iowa has approved that for a track of some sort. I don't believe Cabela's is involved in that at all. But the point is that the mechanism is something that they're looking at in other states to broaden far beyond Cabela's. I think we're only talking about LB 500 because of Cabela's, because we think, well, this is a homegrown company and we really like them. I would tell you--I hate to tell you this--but Cabela's is actually incorporated in Delaware. And I think the reason they're incorporated in Delaware, the same way that ConAgra is, and Berkshire Hathaway, has something to do with our tax structure for corporate entities. And I think that's a doggone shame that we can't incorporate companies in our own state because we can't fix our tax structure so that it actually benefits our companies. But needless to say, we have the headquarters here. And because it was in Sidney, we like it. If they were an Omaha company and they wanted to expand, like Borsheim's, out into another part of the state, we probably wouldn't be talking about it. But what's the best way to help a



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

company like Cabela's grow, not only in other states, where they can actually bring the benefits home to Nebraska, and their personnel at their headquarters, but whether in fact we want to hasten the expansion in the state of Nebraska with another store. One of the projects that could be approved under the bill is an amusement park. It's something I would love to see go in out by the Platte River. But I will tell you that the company that is looking at is has announced in the paper that that project is going to go forward whether or not LB 500 passes. They say, within five years, this is going to be built, whether or not we have LB 500. So I don't think that's an issue here. This was also a company that looked at Council Bluffs and was not able to get the financing, even with the boats over there providing some extras. So I don't know why they didn't approve it. And maybe we'd have to look at it more closely. But that project, they say, will go, with or without the bill. So what we're looking at here is the Cabela bill. And Senator Landis has painted it, as the supporters have, as tourism and entertainment. I would tell you, no, it's retail. It truly is. And there's nothing to be ashamed of saying it's retail. We like stores in Nebraska. I have aunts and cousins and uncles that live in Chicago. The magnificent mile. People go to Chicago and they walk that mile and they shop in the shops. But I will tell you that when my aunts and my cousins come to Nebraska, they don't want to go to Cabela's. They don't even want to go to the zoo. They want to go shopping. They want to go to the Westroads, they want to go to the Oak View Mall. And they don't come here because they were drawn to it as a tourism seat. They come to Nebraska to see their family. But while they're here, they stay longer and they shop. And that's...there's nothing wrong with that.

SENATOR CUDABACK: One minute.

SENATOR REDFIELD: Oak View Mall in Omaha had 12.5 million visitors last year. And the Westroads had 14 million. We're looking at a chart here that says Cabela's had 1.5 million, and maybe if they go into Sarpy County they'll have 2.5 million. If we're looking at the highest use of the land, maybe we ought to be putting a mall out there. Because I'm telling you that the ladies win when it comes to shopping. All right. To the bill.



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 500

There's some elements in the bill that I think we have dealt with in LB 312, which makes me wonder whether we should not be addressing this by adding a retail component to LB 312, that it might be a better venue than the bill that we have before us. Why? Because in LB 312, we very carefully laid out a wage component for the jobs. This has a job requirement for 150 jobs, but nowhere does it tell us whether in fact there's any kind of wage...

SENATOR CUDABACK: Time, Senator Redfield.

SENATOR REDFIELD: ...requirement. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. On with discussion. Senator Stuthman, followed by Senator Brown.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. First of all, I will totally agree with Senator Landis, as far as the topic of discussion. In my opinion, coming down to this body three years ago, I felt that, you know, the discussion should be on the subject on the board. But I have noticed and observed, you know, that it does weigh from that quite a ways. But I don't know how that can be addressed, but that is the situation, I guess, that's been followed here for a long time. So I'm not going to upset the applecart or try to change it. I think that would be a decision of the Chair to see that the discussion is germane to the subject. But, neither here nor there. What I want to do here today is I would like to get on the record and state that I am not in opposition of Cabela's coming to Nebraska. That's the least of my concern. I would invite them to come to Nebraska. I'm also very much in favor of the Entertainment and Tourism Act, if that's what it really is, the Entertainment and Tourism Act. It's not Entertainment, Tourism, and Retail Act. Because I think there's a definite line in what we're discussing. In my opinion, we're discussing the Cabela's issue, we're discussing the theme park coming in, and we're discussing a possible ballpark coming in. To me, that's two oranges and one shiny apple. They're not the same. I don't think they should be treated the same. I think they're totally different. One is a retail outlet. That is the main issue with Cabela's. The other ones are an entertainment

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

or tourism. Totally in favor of them. But how can we come up with something that we can treat them equally, when they're not equal? That is a real concern of mine. I just think that, you know, there's going to be things in the theme park, at the ballpark, that are going to be in competition with some retail establishments. But only because the people that go there go there for the entertainment part. There will be concession stands. There may be a McDonald's. There may be something else at the theme park. But they go there because they want to go to the theme park and see the sights there. And they also eat there. But the people will eat anyway. But they're not making a special trip, you know, to go someplace where they would be the family going to the theme park. I think that's where I have a real hard time trying to decide, you know, what can we do when we're dealing with two different types of situations. And that's a real concern of mine. I don't want to leave the impression that I'm totally against everything. I'm in favor of it. But I think we're dealing with two things. I'm really concerned, because the main interest of Cabela's is a retail outlet. Have we got retail outlets similar to that? Yes. They've paid their fair way. And I think they can come to the area and access what is available today, you know, so they can come here, and maybe what some other retail outlet could have accessed also. I agree with the two-year window part of it,...

SENATOR CUDABACK: One minute.

SENATOR STUTHMAN: ...to try to accomplish something on the short term. But is that going to shut out somebody in the future and give a real benefit to someone that does and has got the intention to come as soon as this was passed? So I've kind of...the other day I was discussing...discussed with Senator Chambers a little bit about the "Little Orphant Annie," the humorous reading. And so I kind of drafted up something this morning, and I'd like to read it to you. Little Orphan Cabela's is coming to Sarpy County to stay / To watch the sales tax dollars come in to service the bonds at the end of the day / And watch the competition go by the way. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Brown, followed by Senator Beutler and five others.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 500

SENATOR BROWN: Question.

SENATOR CUDABACK: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on the motion to reconsider? All in favor vote aye; opposed, nay. We're voting on ceasing debate. Have you all voted who care to? We're voting on ceasing debate. Have you all voted? Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 18 ayes, 1 nay to cease debate, Mr. President.

SENATOR CUDABACK: Debate does not cease. Those wishing to speak: Senator Beutler, followed by Senator Chambers, Friend, Schrock, Landis, Schimek, Mines, Kopplin. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, just wanted to pick up the conversation a little on retail establishments and how we treat them with respect to business incentives. Senator Landis spent some time and passed out to you the assistance that's being given to them at the local level with regard to TIF financing. And I would just simply note with regard to that that the decision is being left at the local level. The debate takes place at the local level as to whether a particular retail establishment should be assisted or not, considering all of the balancing factors. And in that case, I think we should also note that eminent domain is a tool that can be used with...in conjunction with the TIF, and to enforce the TIF financing, whereas in this particular bill, as soon as we get to the Redfield amendment, eminent domain will be removed from this bill, so that this power will be less than what local people have at the local level with regard to TIF financing. But I wanted to move for a minute to what we do...what we've been doing with LB 775, and now with LB 312, which you've already all approved of. And remember, with regard to LB 312, there is no local board deciding anything. If they qualify, they can do the project. Can they do projects that compete with retail establishments or companies? Well, look at some of this language: conducting research, development, or testing for scientific, agricultural, animal husbandry, food product, or

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 500

industrial purposes. My eye stops at "animal husbandry." So if Pfizer wants to build a big additional research addition out there to do research on animal husbandry, can they do it under LB 312? Yes, they can. Are they competing with Novartis down the road? Yes, they are. Can Novartis do the same thing in the other directions? Yes, they can. I don't know if...to what extent those operations have retail operations associated with them. But you're definitely interfering in a competitive relationship. Now, it also says, the performance of data processing, telecommunications, insurance, and financial services. Well, we have lots of insurance companies in Lincoln, many of whom sell retail, direct sales to consumers. And to the extent that any one of those companies wanted to take advantage of LB 312, they could do that, and the state would be involved in some sort of competitive advantage in that situation. Financial services is not limited to wholesale situations, whatever that would be with financial services. But anybody related to financial services can, if they meet the qualifications, apply for LB 312 assistance from the state. Another category is through the storage, warehousing, distribution, transportation, or sale of tangible personal property. Well, distribution, we have financed several distribution centers using LB 312 financing. Those distribution centers directly relate to the competitiveness of retail establishments. Walmart is a good example of that, for better or for worse. So again, we are having an effect on retail competition. The question, it seems to me, is not whether we should do this or not do this and make a flat-out rule about it. I think that the determination that we've come to in most cases...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...is that there's some kind of balancing to go on there, and that what we really need to be sure we have in this bill is balancing mechanisms, at the state level, where the Governor is going to be on the hot seat in making these determinations, or at the local level, where the local council will be on the hot seat in terms of balancing all the factors and being sure that there's not an inappropriate interference with retail competition. And next time I get a chance, I want

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 500

to talk a little bit again about the mechanisms in the bill, what they do do, what we might be able to make them do, if people are interested, for the purpose of reassuring ourselves, to some extent, that unfair competition will be considered at the retail level when decision making is in process. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers, followed by Senator Friend and others.

SENATOR CHAMBERS: Mr. President, members of the Legislature, the Revenue Committee Chairman, in the interest of full disclosure, should have pointed out that TIF, or that tax increment funding, is a local matter. It does not take sales tax money. They talk about property tax. It is not taking any money out of the state treasury. So the two things are not even the same. But when a person has a bad bill, there is an intentional blurring of the lines. And he knows better. And I've seen him make distinctions of that kind in the past. He forgets how many years I've been with him, and he forgets that I know how many actual filibusters he participated in actively when we were dealing with anti-abortion bills. Oh, he was very active. Now, that's what I call hypocritical. He's not interested in the rule of the majority. He has seen bills take eight hours. He was even offering dilatory amendments on LB 312. He offered an amendment to send it back to committee. That's not discussing the bill. And he was not serious about it. He has done the very thing that he's now condemning. But it's all right for him to do it. But he's not going to stand up as Mr. Self-Righteous, and above everybody else, and so noble because he wouldn't stoop to such a thing. And it also is not up to him to decide what people are going to talk about on this floor. We are all grown. He wants to talk about the bill. I bet they're not going to talk about the bill. So what? They don't have to talk about what he wants them to talk about. He doesn't own anything in here. Maybe his committee he does. But I will do as I think I ought to do. And he has done it, too. When Senator Foley talked one of my bills to death last session, I did not stand up and say, somebody call the question. Nor did I say Senator Foley was wrong. I've done it. That's a part of the system. If I can give it, I can take it. And that's what Senator Landis ought to do. But you spoiled him by giving him

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 500

LB 312, and he's been praised by everybody about what a great job he has done. Now he's going to try to dictate to people and pretend that what is happening now is strange. It has happened, and he has participated in it. And for new people who are unaware of it, I want to call your attention to it. We will discuss the bill, and we'll discuss my motions. Because I'm going to keep offering them, and Senator Landis knows that. I'm sure Radcliffe is out there orchestrating this. When Dave...when Senator Landis loses his general ability to be logical and straightforward, it's because--I believe this; now, it may not be true--orders are coming from outside the glass. This is a Walt Radcliffe bill. And as Senator Redfield pointed out, this is, strictly speaking, a retail establishment bill. We're dealing with a store. And somebody said that most of what they sell is clothing. I've never been there. If Cabela's wants to go to some of these local operations who might be affected and use TIF, as Senator Landis suggested is going on everywhere else, let them. And then those people at that local level who decide to give Cabela's all of these concessions can face their voters. I'm a state senator. I'm not a city council member. We're not dealing with tax increment funding...financing. We're dealing with taking tax revenue that should go to the state and giving it over to a private retail operation which is also a publicly traded company, to help improve their bottom line...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...for their investors. Cabela's is not interested in the people of Nebraska. And I'm glad Senator Redfield pointed out where they are incorporated. Don't feel that just because somebody happens to be in your state that they care about your state and the welfare of the people here. They want to make money. And if it's so much easier to go someplace else and do what they're doing, let them do it. With all of the giveaways that are occurring in LB 312, in not many years, there is going to be a piper to be paid, and others are going to be fighting to deal with the shortfall that is going to happen as a result of what this session of the Legislature did. They'll be talking about cutting the university, services, or raising taxes. That's where you mortgage those who will come after us.



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

And it's really not fair. But when has fairness meant anything? This is a bad bill, no matter how Senator Landis tries to paint it.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: And what is happening now has happened many times before. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion, motion to reconsider. Senator Friend, followed by Senator Schrock.

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Somebody, when I first got here--actually, it wasn't when I first got here; I was here a while--told me that I could...when I take the microphone, I could talk about anything I want--Wellington, Napoleon, whatever. I'm not going to do that. I'm actually going to talk about the bill. So you can take a...you can breathe a sigh of relief. Sales tax and revenue bonding. Let's try to focus on what the state of Nebraska, on...in regard to a bill like this, would be trying to accomplish. To me, you can lay out all kinds of confusion about the difference between economic development and economic revitalization. But sometimes that can be misleading. If you don't come up with the definitions and you don't pinpoint what you're trying to accomplish with a certain type of economic development package, confusion will run rampant. Senator Chambers, Senator Landis, others out here, have pointed out that tax increment financing is being used. Senator Chambers points out that it's not really linked with what we're trying to accomplish here. Here's the problem. Tax increment financing is allowed in communities because we as a state have statutes, we made the statutes, that said, here's what "TIFing" is for, here's what tax increment financing is for. And it is for economic revitalization. Here's the difference between economic revitalization and economic development. You've got areas in Omaha, Grand Island, Hastings, wherever else, that need that help. There's stuff out there, and they said, look, we can revitalize these areas. Let's TIF them, because everybody else in town, it benefits them, it helps them. We've got statutes

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

that lay those guidelines out for those people. But here's what happened. A funny thing happened on the way to this revitalization effort. We're using it all over the state as an economic development tool. When you've got people in the city of Omaha, when you've got business people in the city of Omaha using that, using the statute to their benefit in order to move out of an area that needs revitalization and into an area that doesn't necessarily need it, you've got a problem. And guess what. It's not just a local problem; it's a state problem. Now, what we have in STAR bonding, whether you like it or not, is not that misleading. It's just not. It says, here's what we're going to use it for. And frankly, maybe two years down the road--Senator Flood pointed this out earlier--somebody is going to scratch their head and say, you know what, it was more misleading than we thought; let's take a step back and analyze what we've done, because we've made a mistake. But look, my reading in the statute, I don't believe that will necessarily happen. This is a tool. Remember what we're trying to accomplish with something like this. This is a tool designed--and others have used it--to promote incremental economic development: two years, four years, six years. You get up in a 747, or you got a satellite photo of these particular areas after X amount of time, and how they've grown. Now, we have to make the public policy decision out here whether that's a good thing to do.

SENATOR CUDABACK: One minute.

SENATOR FRIEND: I would submit to you that I think that it is. Because, A, we are not driving down a road with our statutes that says, you know what, let's revitalize these blighted and substandard areas, which is what TIF says you have to do, let's revitalize these blighted and substandard areas. We're not saying that here. We're saying, here's a cornfield. Now, granted, some cornfields are blighted and substandard. But that's not what the statute meant, folks. Let's go and look at what we've got here in these areas, and see where that corridor development can occur. STAR bonding, I would submit, could do that. That's why I'm here. That's why I'm talking in a manner that would say, let's give a two-year shot at something like this, let's try it. Now, if I'm wrong, and I am still here

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

and/or alive, I will raise my hand and I'll say, I was wrong. I've done it before, and I'll do it again.

SENATOR CUDABACK: Time, Senator.

SENATOR FRIEND: Thank you.

SENATOR CUDABACK: Thank you, Senator Friend. Senator Schrock, followed by Senator Landis.

SENATOR SCHROCK: Mr. President, members of the Legislature, one thing that I don't think has been pointed out, or at least not directly pointed out--this, to me, is a quality of life issue. And we're doing economic development for the state of Nebraska. To me, this is not an economic development issue; this is a quality of life issue. And I would guess that if this takes place and a new company is looking at locating in the Lincoln and Omaha area, when they're recruiting this company, they'll say, by the way, we have a wonderful theme park out here, and by the way, you can go to Cabela's. You know, I've never been with a group of men who say, we want to go shopping, we want to go with our wives shopping. But I can tell you, when I go on a fishing trip, there's about six of us that will go to Kearney and have dinner, and then we'll visit not just Cabela's, we'll visit the other sporting goods store also. Now, I hate to admit that about six guys go shopping about once a year. But it's Cabela's. This is a quality of life issue, I believe. And I think it will help attract people not only to come to Nebraska for destinations. It's not so much the destinations. But I think when we're recruiting companies to come to Nebraska, I think it's going to be a tool. By the way, we have a nice theme park out here. By the way, we have a Cabela's out here. It's a world destination. I find it amusing that when the Nebraska Division of Tourism and Travel...they call this a Nebraska attraction. They don't call...Senator Janssen, they don't call Walmart an attraction. And I think that's a difference. I think Cabela's is more than retail. It's above retail. I'm sure that a lot more people go to Walmart in the state of Nebraska than go to Cabela's. But it's not an attraction. I recall that Walt Disney took his children to a park one afternoon, on Sunday afternoon, and he said, wouldn't it be nice

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

if we had something to entertain my kids? And that's the reason Disneyland was built, the original theme park, I believe. Disagree with me if you want to. Well, maybe Coney Island in New York. I don't know. And that's the reason Disneyland was built, because Walt Disney wanted a place to take his children on Sunday afternoon. And I think there's a lot of people in the state of Nebraska that would like to have...take their children to a place some day without having to drive three or four hours. If I have any time left, Senator Landis, you're welcome to it.

SENATOR CUDABACK: Senator Landis, about 2, 35.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. Senator Chambers is quite right. I have participated in filibusters. I've been part of that myself. I've pushed things to cloture. He's quite right. He identified an area where that historically has occurred. It's been in life/choice issues. I think I tried to make that distinction when I was speaking. But he's quite right. That's an accurate description of the past. In this case, by the way, I don't think it rises to the level of a deep moral conviction. But maybe it does to you. But I had hoped to make that distinction. I think I had before. By the way, TIF is very different from sales tax and from the StarTran bonds, because it's a different tax base. I didn't think the body needed instruction on that. My understanding, my guess, was that you knew what TIF was. So many of you have come from local political subdivisions who use this, and you knew that it was the property tax. But if we needed to go back that level, then let me just tell you that the TIF is based on the use of the property tax base. It's a local decision. And if I didn't make that clear before, that, too, is also quite accurate. Have we spent a moment talking about reconsideration? We haven't. We've been talking about LB 500. Is it a good bill? Is it a bad bill? Fair enough. There's a way to find out, and that's to take the issue to a series of votes on amendments, and then up or down passage. And if it's a bad bill, and if Senator Chambers persuades you it's a bad bill, I expect it not to have a majority opinion. If it's a bill that the majority of this body is comfortable with, I expect it to go on to the next round.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

SENATOR CUDABACK: One minute.

SENATOR LANDIS: That's what I would like to see, is the test of whether or not Senator Chambers' view of the future or my view of the future is more accurate, whether or not the 300 jobs that occurred in Kansas City or the 450 jobs that occurred in Owatonna, Minnesota are worth the investment and striking out in a new way than we have ever done before. This is a new way of striking out to the general economic development agenda than we ever have before. Let me acknowledge that. Whether or not there was a virtue to trying to link tourism and retail and entertainment in a cohesive whole that pulls people off the Interstate, makes them stop, spend money, stay overnight, go to restaurants, go to theaters, and shop, and see museum-quality displays while they're there, and maybe go to the SAC museum, or wherever, is a good idea. I think it is, and I think it's worth the investment. But I'm not exactly sure, which is why I'd like to open the window for two years, see if that's accurate,...

SENATOR CUDABACK: Time, Senator.

SENATOR LANDIS: Okay.

SENATOR CUDABACK: Thank you, Senator Schrock, Senator Landis. Senator Landis, your time is next.

SENATOR LANDIS: I call the question.

SENATOR CUDABACK: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on the motion to reconsider? All in favor vote aye; opposed, nay. We're voting on ceasing debate. Have you all voted on the question who care to? Senator Landis, what purpose do you have you hand up for?

SENATOR LANDIS: I would ask for a call of the house.

SENATOR CUDABACK: Been a request for a call of the house. All in favor of the house going under call vote aye; those opposed, nay. Record please, Mr. Clerk.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

CLERK: 17 ayes, 0 nays to place the house under call.

SENATOR CUDABACK: The house is under call. All unexcused senators please report to the Chamber. Unauthorized personnel please leave the floor. The house is under call. Members, please check in. Senator Engel, Senator Flood, Senator Langemeier, Senator Heidemann, Senator Fischer, Senator McDonald. Senator Friend, would you check in, please. Thank you. Senator Stuthman, Senator Thompson, Senator Engel. The house is under call. Senator Brashear, Senator Fischer. Senator Schimek. Senator Smith, would you please check in. Thank you. Senator Schimek, the house is under call. Senator Landis.

SENATOR LANDIS: (Microphone malfunction)...with a board vote, I'd be satisfied with that.

SENATOR CUDABACK: Senator, we've already had a board vote, Senator. You have two options--a roll call, or call-ins.

SENATOR LANDIS: Call-ins would be fine.

SENATOR CUDABACK: Senator Landis has accepted call-ins on the motion to cease debate.

CLERK: Senator Foley voting yes, Senator Baker voting yes, Senator Smith voting yes, Senator Flood voting yes, Senator Engel voting yes, Senator Brashear voting yes, Senator Erdman voting yes, Senator Loudon voting yes, Senator Langemeier voting yes.

SENATOR CUDABACK: Record please, Mr. Clerk.

CLERK: 25 ayes, 2 nays to cease debate, Mr. President.

SENATOR CUDABACK: The motion was successful. Debate does cease. Senator Chambers, you're recognized to close on your motion.

SENATOR CHAMBERS: Happily, Mr. President. Thank you. Members of the Legislature, Senator Landis says that if I have the



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

courage of my something or other--and courage doesn't even apply; that's why I don't even remember what he was saying--of my beliefs or something. That doesn't even enter into this discussion. Courage is not a factor on the floor of this Legislature. That is just a careless, loose use of words that may have a sound of sense, but they make no sense, and they don't rhyme either. No rhyme nor reason. Now you know what that term, neither rhyme nor reason, mean. I'm going to attack this bill at every opportunity, in every way I can under the rules. Senator Landis is probably on the side of those people in Washington who say you should get rid of the Senate filibuster and give the President an up or down vote on these crazy judges. That's what he believes--let the majority do whatever they want to do. I don't believe that. Maybe if I was in the majority. Maybe if I was carrying water for big business and being praised by all of them, and maybe being lined up for something after I get out of the Legislature. I'm not accusing you, Senator Landis. People are sensitive about that, aren't they, Senator Foley? Okay. Just got to keep this stuff straight. (Laugh) Oh, I enjoy being in the Legislature. If I didn't, I'd be stone crazy. Now, I might drive others a little bit crazy every now and then. But you see, it never gets to me. Because I'm going to do what I'm going to do anyway. Accept it, so you won't get heartburn and headaches and go to secret meetings to try to figure some way to make me shut up, which I'm not going to do on a bad bill like this. Senator Landis wanted to distinguish between his noble attempts at filibuster from what's happening now, by saying that those were moral issues. Who is he to determine what is moral to somebody? When I see the plundering of the public till, I think that rises to a moral issue, because we have a moral responsibility as senators to look after the interests of the people at large. And when you're going to let a big, self-sufficient, greedy retail operation plunder the public till and wipe small businesses out, that is a moral issue. Ask the little businesses that will be wiped out, and ask their families, as some of you who want to talk about family values in other contexts want to belabor. It's a funny thing that I am pointed to as an obstructionist--that term wasn't used, because it hadn't been thought of; it will be used now--when there were 13 lights on to...of people who wanted to speak. That's not what a

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

filibuster is. So I have become so large, in the minds of some people, that when others are speaking, they are totally discounted and ignored, and the only one mentioned, moi. For heaven's sake, how can I remain humble? It's hard. And Senator Bourne, if I weren't so humble, I would acknowledge how humble I am. This is serious business. And I'm supposed to just roll over, to make Senator Landis and Walt Radcliffe feel good, or to try to make somebody on this floor like me, when you're not going to like me anyway? And some of you...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...will like me despite yourselves. But all of that is irrelevant. I do see this as a bad bill. Senator Landis says give him an up or down vote. I heard one of the American military commanders say this morning, I'm tired of this cloak and dagger stuff in Iraq; I want them to come and stand out and have an open fight. Well, you got bombs, you got fighters, you got tanks, and you want me to come out and stand on the street with a target on my chest so you can blow me away? Well, I'm not going to let my enemy tell me how I should battle my enemy. So let him get upset. He'll get over it. He's only got ten more legislative days of this. Then it will all be forgotten. But if I roll over and don't do my duty as I see it, I won't forget it. So I'm interested in doing what I think is right. And I'm going to continue to do it. Mr. President, we're still under call?

SENATOR CUDABACK: We are.

SENATOR CHAMBERS: Okay. I will take a roll call vote.

SENATOR CUDABACK: You've heard the closing on the motion to reconsider. Mr. Clerk, please read the motion before the body.

CLERK: To reconsider the vote to bracket LB 500, Mr. President, to June 3, 2005.

SENATOR CUDABACK: All in favor of the motion as stated by the Clerk vote aye; those opposed vote nay. I'm sorry, Senator Chambers. Did you ask for a roll call vote? You did.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

Mr. Clerk, please call the roll on the question.

CLERK: (Roll call vote taken, Legislative Journal pages 1631-1632.) 9 ayes, 27 nays, Mr. President, on the motion to reconsider.

SENATOR CUDABACK: The reconsideration motion was not successful, and I do raise the call. We are now back to the Revenue Committee amendment. Mr. Clerk. Mr. Clerk.

CLERK: Mr. President, I do have amendments to the committee amendments. But Senator Chambers has filed a priority motion to recommit the bill to the Revenue Committee.

SENATOR CUDABACK: Senator Chambers, would you come forward, please. Senator Landis, for what purpose do you rise?

SENATOR LANDIS: I'm asking for the Chair to make a ruling as to whether or not the Chambers motion is in order. And I want to make a point...or, a point of order that I think that it is not in order at the moment.

SENATOR CUDABACK: Okay, Senator Landis. Senator Landis, why do you think...why are you thinking this, that it's not in order,...

SENATOR LANDIS: (Laugh) Yeah.

SENATOR CUDABACK: ...the motion filed by Senator Chambers?

SENATOR LANDIS: We had, at the General File level of debate, a motion to recommit. We voted on it yesterday. We also reconsidered that motion, and we voted on it yesterday, at the same level of debate. Unlike the rule on bracket motions, which I think is clear in that you can make subsequent motions even at the same level of debate, it is, I think, ambiguous at best with respect to this motion, and therefore consistent with the general practice, which is that we do not make an amendment that has been offered and failed a second time on the same level of debate. I think this does operate in the Chair's discretion. I don't think the rules are clear. I think the better precedent

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

lies in how we treat amendments which have been voted on and failed, and particularly voted...amendments that have been voted on, failed, and then the reconsideration motion has been voted on and failed. Because I think that's where we are now.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Chambers.

SENATOR CHAMBERS: Mr. President, a motion to reconsider...recommit is a motion. It's not an amendment. It can be offered on successive days. There is nothing in the rules that prohibits it. And I think it would be a mistake to let the Chair on an ad hoc basis create new rules out of whole cloth. There is nothing in the rules which will say that a motion to recommit cannot be made on successive days. To show the logic, or the illogic, of what Senator Landis and the Clerk have argued--because that's the Clerk's argument--if we had a bill before us, and a motion had been made to recommit yesterday, and it didn't succeed, then we find all kind of problems with the bill today, then a motion cannot be made to recommit that bill, even if the introducer wants to recommit it? That makes no sense. This is not an amendment. This is a motion. When we look at our gadgets right now, you will see either "AM" or "FA" in front of whatever is pending. "AM" is for some kind of amendment; "AM" for amendment. "FA" lets you know it's a floor amendment. "Motion" is signified by the letters "MO." A motion is not an amendment. A motion to reconsider is a motion. So rather than take something which is like something else and compare it to that, you're going to compare it to something which it is dissimilar to, is wrong. Now, let me break that down. If you're going to compare the motion to recommit to something, you should compare it to another motion. And another motion is a motion to reconsider. You're comparing motions to motions. And a motion to reconsider can be made on successive days. A motion to recommit can be made on successive days. Nobody has attempted to compare a motion to reconsider to an amendment, because it's not. The motion to recommit does not change the bill in any way, shape, or form. It's merely putting before the body the request or the opportunity to take a vote on the whole bill without changing the bill in any respect. And that is the same way with a motion to reconsider. It's not an amendment. And I think it's a

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

stretch to make that comparison. However, if the Chair rules that way, that then becomes our rule. The Chair will be creating a new rule, and a motion now becomes the equivalent of an amendment. And I think that is not wise. But the body has behaved in a way that was not wise in the past, when I am the subject of it. But suit yourself. If that becomes the rule, I can live within it. But everybody else is going to live within it, too. Unless it becomes inconvenient. Then the body will agree, well, yeah, the recommit motion was made yesterday, but it needs to be made today, so make it again. I would...

SENATOR CUDABACK: Senator Chambers, are you through...are you finished?

SENATOR CHAMBERS: Yeah, I'll be through.

SENATOR CUDABACK: Senator Landis, I'm going to sustain your point of order that Senator Chambers had offered this motion yesterday and reconsidered it, so the Senator Chambers motion is out of order. Senator Chambers, you may challenge the Chair, as you know, if you so incline. Senator Chambers. Senator Chambers, you're recognized.

SENATOR CHAMBERS: Mr. President, have it your way.

SENATOR CUDABACK: Senator...or, Mr. Clerk, please.

CLERK: Mr. President, the next amendment I have to the committee amendments is by Senator Landis, AM1529 as an amendment to the committee amendments. (Legislative Journal page 1470.)

SENATOR CUDABACK: Senator Landis, to open on AM1529.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. This amendment takes out explicitly some of the things that we did not want to have covered in the costs that would be attributable or payable. Development project cost does not include property taxes incurred by a company that's located within a development project area, any type of lobbying expense, or the development, construction, or operation of any type of

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

parking facility that requires the public to pay a fee. And then in another place, on page 18, it says, financial assistance shall not include any lodging tax collected by a hotel as defined in Section 81-1247. The contracting public body may not pledge any portion of the financial assistance received under this section for the construction, development, or operation of a parking facility that requires the public to pay any fee of its use. Senator Howard brought me this concern. I decided to put it into this amendment. And I also wanted to make explicit some costs that could not be used, that the money could not be used for. And that was...in the legal fees, I didn't want legal fees to be defined as lobbying costs, and I didn't want costs for the operation of the...or, land acquisition, to include property taxes. We had a question about this on the floor the other day, and for that reason, I ask for the adoption of this amendment. And Senator Redfield, I think, has a significant amendment after this, on the use of eminent domain.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the opening on AM1529. (Visitors introduced.) Discussion of AM1529 offered by Senator Landis. There is a request to divide. Senator Chambers, Senator Landis, would you please come forward? The Chair does rule that the amendment is divisible. Mr. Clerk, please inform the body where the question is to be divided.

CLERK: Mr. President, pursuant to your order, AM1529 has been divided into three components. The first component will consist of lines 1 through 8, the second component will consist of lines 14 through 19, and the third component will consist of lines 9 through 13. And Senator Landis, I believe that's the order you wanted to take them up. Mr. President, therefore the Legislature is considering the first eight lines of AM1529 as an amendment to the committee amendments. (FA272, Legislative Journal page 1632.)

SENATOR CUDABACK: Senator Landis, you are recognized to open on the first eight lines of AM1529.

SENATOR LANDIS: Let me read this to you, so you'll hear what it says. Development project costs...and by the way, these are costs that are, if you are a development cost, you can be



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

reimbursed by the StarTran bond proceeds. Development project cost does not include property taxes incurred by a company that locates within a development project area, any type of lobbying expense, or the development, construction, or operation of any type of parking facility that requires the public to pay a fee. I would ask for the adoption of the amendment.

SENATOR CUDABACK: You've heard the opening. Open for discussion. Senator Mines, followed by Senator Combs, and eight others.

SENATOR MINES: Thank you, Mr. President, colleagues. I support the division of the amendments, support FA...the amendment...excuse me, the division to AM0773. I'd like to talk about the bill for just a minute, get my two cents in before this thing comes to an end. There is a presumption in some of the testimony that we've heard that we presume Cabela's will come here anyway. We also presume that the park will be here in total, and I guess I presume the opposite. I presume that--and we've been told, flat out, both in here and out behind the glass, that Cabela's is not coming, but for LB 500. Now I understand that the park is coming; however, they would spend about \$50 million on the park, or invest \$50 million, as opposed to \$130 million with LB 500, build it on a larger scheme. And Senator Schrock made a good point. Certainly, this is about economic growth; this is about spending; this is about everything we've all talked about. But it is quality of life, and when you have destination locations, people tend to come, and you've seen all the projections. On a personal level, you'd have to handcuff me to drag me into a Cabela's. It's not the kind of place that I...that interests me to shop. It's a wonderful company. I've been to both of their stores for maybe a total of ten minutes each. It's not what I do. However...no, I wouldn't go. Sorry. I'll be there for ten minutes, Senator Price. However, many people do, and many people go to amusement parks. And perhaps I would partake. It's...everyone has their own tastes, their own opinions. Cabela's just doesn't happen to be one of mine, but I do support the concept. STAR bonding is a fascinating form of financing and funding a new project. The state or the city has no up-front cash. Long term, certainly, there's an impact. But if you look at the numbers just proposed

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

on spending, there would be \$140 million. This is an estimate. If you add the park and the Cabela's taxable sales revenue, annually it would be about \$140 million. Over a ten-year period, 25 percent of the state tax would end up with the state. That's \$17.5 million over ten years. That's not bad. Additionally, there is an investment on both ends, roughly \$25 million for Cabela's, roughly \$130 million for the park--that's property tax--is unaffected by that. So local entities, schools, counties, receive property tax revenues. Finally, there's a local sales tax element to this, up to a 1.5 percent, that counties could implement a local county tax on those very same things that the state is taxing. And over ten years, that would amount to local sales tax revenues of \$21 million. So if you add it all together, you've got about \$38.5 million over ten years that the state and local entities would realize, plus property tax. Would the companies that participate in this receive benefit? Yes, but it's performance based. They have to perform; they have to sell. They have to sell products and services in order to receive their...

SENATOR CUDABACK: One minute.

SENATOR MINES: ...75 percent of the sales tax that is spent. The state is not out anything up front. The counties and cities aren't out anything up front. I think STAR bonding is a unique, ambitious, and will be a successful tool for Nebraska. And I support the amendment; I support LB 500. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. Senator Combs, followed by Senator Brown and others.

SENATOR COMBS: Thank you, Mr. President, members of the body. I'm still listening on this issue. It's just General File, and I know that there's a lot of discussion going on, but I did want to bring something out that...I've been doing some research on the Internet. I found something talking about what...Kansas did this. Kansas did STAR bonds, and there's an article that was just posted a month ago in the Kansas City Star. It's dateline Topeka. Lawmakers are angry over the use of tax incentives at Village West and Kansas Speedway are calling for more oversight

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

and a cap on subsidies to future projects. A legislative audit released last month found that Wyandotte County's Unified Government and developers made some questionable purchases with state subsidies, known as the STAR bonds. The bonds use taxes generated by development to pay for expenses related to its creation--infrastructure, land purchases, et cetera. Cabela's, Nebraska Furniture Mart and nearby Legends Shopping Center all use STAR bonds. The audit...and I don't know if we have an audit function in our bill or not, but they do have legislative audit oversight written into theirs. Public money went for things such as a \$5,000 barbecue lunch, lawyers whose responsibilities include looking for ways to leverage more public money--and I believe that's what this amendment is seeking to exclude--publicly owned buildings and items--including robotic dinosaurs and an aquarium--that pay...directly service the developments. The county also gave land to the developers, who later sold it at a profit, and the state performance audit report of Kansas said that that was Cabela's, and they sold it for \$10 million. County officials have defended their actions, saying the development has created jobs and more than \$800 million in investment. That's pretty significant. So far, according to the audit, the Unified Government has authorized \$305 million in bonds for the speedway and Village West. The audit makes it clear that the government of Wyandotte knew what we expected and threw it in our face, said Jay Elmer, a senator and Lindsborg Republican. For weeks legislators have debated ways to give state and local governments more oversight and control over STAR bond use. And I want to make sure--we're just in General File now--that this has been looked at, that we should have legislative oversight and control in an area that's relatively new. I am not against doing this, and I want to make that clear. I'm very much in favor of having some kind of an area within Nebraska that is an attraction for a certain theme or perhaps...I've talked often about the Research Triangle in North Carolina, other states that have things like that. Nebraska needs something like that. And, as we launch off into this new kind of fund sourcing, we need to make sure, though, that we have proper legislative authority over the auditing of it. And again, that's what Kansas is kind of retooling this year, that they didn't do last year. We have to go after this, said Karin Brownlee, a senator

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

and Olathe Republican. It's just so clear that they violated the intent of the law. But lawmakers don't want to hamper future redevelopment projects there and elsewhere. And I think that's what we're hearing on the floor today by the proponents. What I would hate to see us do is stop that development, said Representative Tom Burroughs, a Kansas City, Kansas, Democrat. My concern will be that we need to have assurance that this money is going to be used properly, and part of that assurance, for me, would include specific legislative oversight or an audit of some kind, and maybe...perhaps, specifying the area, you know. This...it's kind of open. I'm not sure that...

SENATOR CUDABACK: One minute.

SENATOR COMBS: ...any other places would use the benefits under this legislation, but it does not specify, as Kansas' did, as to the specific location that it was to be placed. One other thing. There was an article I got from the Lincoln Journal Star here that says...this was written by Rodd Cayton, Wednesday, May 18. Even if LB 500 does not pass, Minard said--this is the owner that going's to be putting the amusement park in--the Wild Escape theme park portion of the resort will be built in five years at the most, he said. He has signed contracts committing Wild Escape to a specific piece of land, but he declined to identify the location, saying developers of other components of the resort are still trying to acquire the land. So again, this is the developer of that amusement park, who is quoted in the press as saying that whether or not LB 500 passes, he said that it will be built. Now I don't know. He said that same thing in Kansas and didn't have the money to do it.

SENATOR CUDABACK: Time, Senator Combs.

SENATOR COMBS: Thank you.

SENATOR CUDABACK: Thank you, Senator Combs. On with discussion. Senator Brown, followed by Senator Beutler. Senator Brown.

SENATOR BROWN: Mr. President, members, I appreciated what Senator Combs just said, because one of my concerns about this

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

is that we get to some of the changes to the bill that need to be made, in order to make those of us who believe conceptually in this, accept it conceptually, more comfortable with it technically. And I am supportive of Landis' amendment, the Landis amendment that's before us, because I think it does a piece of it. As best I can understand, from looking at it, the Landis amendment is somewhat similar to Senator Howard's amendment, and we've divided it into pieces. I very much would like to get to Senator Redfield's amendment, which deals with eminent domain, which is a piece that I think is essential for us to bring the technical pieces together. That is what...there is the argument, the whole argument about whether or not you agree that this is a useful tool for tourism development. I happen to believe that it is; I happen to believe that the projects that are in front of us right now as potentially using this are all things that would improve our tourism. I think that's something that we need to do. But I want to be able to get to some of the technical aspects of the bill, that we can make better, make more...make sure that we have something that is more defensible than some of the aspects of what happened in Kansas. But most of the arguments about what happened in Kansas had to do with the speedway, and less about some of the other parts of the development. And so it is essential for us to have the technical pieces in place that we would like. That's why I really hope that we are able to deal with the amendments that we have in front of us and get the bill in better shape. One of the issues that I feel strongly about, that I would like to consider if this bill is to move forward, is to consider the...a small portion of the recapture that might be used for tourism more broadly. So right now the bill calls for 75 percent of the recapture of the sales tax to go to paying off the bonds. I would prefer to look at maybe 5 percent of that going into tourism more broadly. I think that if you look at that piece and then look at the numbers that Senator Landis has talked about, in terms of the 25 percent that the state would retain, the sales tax being \$2.8 million I think is what he said, I mean, those things, I think, make it very easy to go out to the public and explain why this was a good investment for the state. We really were one of the states that spends the least on tourism. We really have to do more. This is a way that allows us to invest in a Nebraska company, where most of the stock is

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

still held by Nebraska residents. I think we're very fortunate that the Cabela brothers not only started the company, but have kept it in Sidney and kept it here. When you're dealing in an international kind of environment and you're having...buying and selling...

SENATOR CUDABACK: One minute.

SENATOR BROWN: ...to China, and you fly into North Platte and then have to...the transportation...to maintain a world headquarters in Sidney, Nebraska, is a huge issue. And we should be very pleased that this company has chosen to do this, and this is an opportunity. Other states are doing it. I shop at Scheels. I appreciate having Scheels in the community. Scheels is one of the few sporting goods stores that handles European soccer things that my family is into European soccer. I really see the possibility of a Cabela's as being a very different kind of animal, and I think the two can coexist, and it can coexist in a way that's beneficial to the state. But I want to get down to the business of dealing with the specifics of the bill, because I think that technically, even with the committee amendment, there's a lot we need to do. And the Redfield...

SENATOR CUDABACK: Time, Senator Brown.

SENATOR BROWN: ...amendment is one of the things. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Senator Beutler, on FA272.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I just wanted to talk a little bit one more time. We had talked earlier about TIF, the local level property tax incentive for business, and the fact that local city councils there can make decisions balancing the factors, and can involve retail businesses, helping one at the expense of another, and can really hurt in a devastating way other retail businesses, to the extent that they exercise eminent domain to remove those businesses. So we've given a lot of power at the local level. And at the state level, I think we've established with the



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 500

LB 775 and son of LB 775, LB 312, prerogatives, that even at the state level, wholesale versus wholesale, retail versus retail, can be affected by certain provisions in LB 312, and yet there, there's no public entity whatsoever that makes a decision on the balancing of the factors. If your application meets the qualifications of the act, it's good. In this bill, I just wanted to go over briefly with you what does exist, in terms of public hearings, to bring before the deciding bodies the questions of whether there are retail establishments that might be damaged. First of all, remember you have two different mechanisms here, two different opportunities for public input and for a public decision that won't necessarily be in favor of Cabela's or anybody else that...Cabela's or anybody else that's applying here. First of all, you have a board consisting of the Governor and the State Treasurer and the chairperson of the Nebraska Investment Council. And consider for a moment the pressure the Governor is going to be under in a question like this, if there are substantial questions about retail competition. I think the Governor is going to be highly sensitive to that question and may well not approve particular projects, if the competitive element is too large or strong, or if the advantage in the public interest is otherwise too weak. But when it goes before that board, the board is asked to consider a number of different things, and takes in different kinds of information, and it takes in such other information as the board determines is necessary to decide whether the area is an eligible area. And I assume, if we wanted to, we could even put in specific...a specific factor here, with regard to retail competition, but it sounds to me like, even under that "such other information" provision, they could request an analysis there. And then relating to that decision at the state level, as to whether to create a district at all, is a public hearing, and, of course, anybody can come in who feels that they're being unfairly treated and make their case to the Governor and that small board. So then that board has the, has the right and the responsibility of making a decision as to whether a district is going to exist. But once there's a district, then there's a whole other second process that involves a public hearing at the, at the local level, and that local decision has to do with the development project plan that is being presented. And once again, in that public hearing, there is an opportunity to come

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 500

forward and state an objection with regard to the competitive element, and how it might affect other competitors or retail competitors. So the process is open at that point. It's open to all interested persons. You could even amend this if you wanted to, and explicitly give people...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...the right the make written objections. The factors that they have to consider are laid out in the statute. You could add a factor requiring that they consider retail competition and the effect on retail composition, although I think, again, they probably could do that on their, on their own motion. But anyway, there are more protections in this bill, against this kind of concern, or with respect to this kind of concern, than there is in LB 775 or LB 312, and this bill is better than even the local powers that we give, in the sense that we will not have an eminent domain prerogative as do local political subdivisions with regard to the TIF matter. So notwithstanding the fact that this deals with entertainment and tourism, it has some protections in it that are not apparent in other things that we've done in the past...

SENATOR CUDABACK: Time, Senator.

SENATOR BEUTLER: ...with respect to the retail competition element.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers, followed by Senator Redfield.

SENATOR CHAMBERS: Mr. President, members of the Legislature, for a good bill that doesn't need to go back to committee, there is going to be an awful lot of amending attempted. Well, since I will take my whippings, I think I might could have overruled the Chair, but I want the body to live with what the Chair said about not being able to recommit, make a motion to recommit. So as long as this bill is on General File, no motion to recommit is in order, so you're going to plow through every amendment. And I'm going to steal a cliché that the "General" has given us, but he's not here to hear me acknowledge it. I remember it, not

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

because it's profound, but because it drives me to distraction. He says, "so and so and so, and guess what." And then he doesn't tell you what you're guessing or the what. Then he'll go on and then he'll say it again. If the "General" is anywhere, guess what. He'll know that I'm telling the truth. But this is on my own. Guess what. You're going to adopt some of these little innocuous proposals, aren't you, of the divided question, aren't you? And you know what I'm going to be? Not voting on every one of them. And guess what. I'm going to move to reconsider every one of them, which was not my intent. Some people are so smart. When I offered my recommit motion, you know what I said to those in the culture corner? They can bear it out. This is my last motion. That's what I said. But they're so smart. They're going to fix me. And Senator Landis did not raise the issue. It was raised up there. Who runs the Legislature? We need to find out. But I'm going to let them run it any way they want to, and show you that you cannot stop me. I'm telling you that. I'm challenging you, and you can take it any way you want to. And I'm the only one on the floor who will say it, because I don't fear Walt Radcliffe, the lobby, Senator Landis, the Clerk, or anybody else. You cannot stop me, as long as you have any rule that you utilize. And if you make a motion to suspend every rule in the book, you have played directly into my hands, because you sure can't stop me then. So now, what I had not intended to do, I'm going to do. I promise you, every vote you take, I'm going to be not voting, and I'm going to move to reconsider it. And we're going to be on this bill forever and a day, until the 12th of never, and another day. And since I'm the lord of the Legislature, a day with the Lord is as a thousand years. Senator Landis brought us to this point. His committee let a bad bill out here. "Emperor" Radcliffe brought it to us. You see how badly constructed it is. All these amendments. You can stop me, though. After the budget bills are signed or vetoed by the Governor, you can then adjourn sine die. And you will have stopped me. That failing, you're just going to have to endure me. Brothers and sisters, friends, enemies, and neutrals, whatever does not kill you will make you stronger.

SENATOR CUDABACK: One minute.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 500

SENATOR CHAMBERS: And I shall not be deterred. I shall not be moved. I shall not relent. You've got a ruling that you wanted. Somebody said, be careful what you pray for, because you may get it. And I always add to that, you may get what you pray for, but it's not what you wanted. You got exactly what you asked for, but what you asked for was not what you wanted. Now, you're going to get what it was, ultimately, that you asked for. And I assure you, I will not get tired, and I will not run down. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion. Senator Redfield, followed by Senator Landis.

SENATOR REDFIELD: Thank you, Mr. Cudaback--Senator Cudaback, I'm sorry. Senator Landis, I think that the portion of the amendment that is before us is an improvement of the bill. When I go back to the original bill that it refers back to, it talks on page 2 about such development or redevelopment into entertainment and tourist destinations will likely not occur in these areas, if left to the normal regulatory process and the ordinary operations of private enterprise. Now I can't say I agree with that statement, because we just, in Senator Brown's priority bill, created a corridor entity to provide for orderly development of the I-80 corridor between Omaha and Lincoln. I think it's generally accepted that we're going to see that develop in our lifetimes, and they'll be fighting over the land, so I don't think we have to worry about that. Senator Beutler brought up an issue talking about the board here that would actually approve the project. They're in the bill; there are three people that comprise that board: the Governor, the Treasurer, and someone from the investment council, the Nebraska Investment Council. And I do see potential for mischief. While you may see that that's safer than what we have, I would say to you that the process that we have developed in LB 312 and previously under LB 775, we have criteria that is set out, it's objective. The Department of Revenue looks at it. Did you meet the criteria? If you did, you get it. It doesn't have anything to do with personalities. It doesn't have anything to do with whether I like you or I don't like you. It doesn't have anything to do with whether I'm making a subjective decision, because in this bill we actually have that board looking at it,

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

and prior to a grant of financial assistance to the contracting public body, the board must first make a finding that as a result of the development project, retailers and other companies conducting qualified business activities will locate their business in that portion of the contracting public body's entertainment and tourism development district, occupied by a development project. Well, they'll probably say yes, they will, if they get--I would expect they would, if they got approval. "B," there will be a substantial increase in the amount of state sales and use taxes for services and tangible personal property sold at retail, or stored, used, or consumed in the development project area, and if applicable, a substantial increase in the amount of state sales and use taxes and state lodging taxes collected and remitted with regard to hotel occupancy charges in the development project area. Well, there will be a substantial increase in them, but under the terms of the bill, for up to 25 years, they would actually be diverted, other than 25 percent of the state taxes, which would be retained. But "C" is the one where I think it could be problematic for this board. They have to make a finding whether a substantial amount of the increase in the amount of state sales and use taxes, and if applicable, state lodging taxes collected and remitted, will be attributed, or attributable, to transactions with tourists who are not residents of this state. And I don't know how they would determine that. Now clearly, with a hotel I suppose you could take their license number and you would know, because usually people, when they stay at a hotel, are from out of town; that's why they need a bed to sleep in. But the sales tax portion of this, I think, would be problematic. And the reason I see some potential for mischief here is that we are looking in this two-year window at a governor, who will be running a competitive race against at least one other person who has represented District 12 in Congress, which represents Cabela's, so you're going to be putting pressure on the sitting governor...

SENATOR CUDABACK: One minute.

SENATOR REDFIELD: ...in making a decision, because he knows that the Cabelas and all their supporters aren't going to like it if he doesn't approve the project. So I don't think he's going to be able to make an objective decision there. The

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 312, 500

Treasurer also has...I'm hearing some rumors that he may be running for the 3rd District seat being vacated by Tom Osborne, so again, I don't think we're going to have an independent, objective person. And I don't think it's fair to put a political entity in this position of making that decision. So when I was talking about the bill earlier, and some of the things I think we would need to address, I think there are some serious things like that where, are contributions going to come in from these entities into the campaign funds for these people? So I think there are some serious things, and that's why I think an objective analysis, as we have created in LB 312 with some of the safeguards, might be the best way to address this. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Further discussion. Senator Landis, followed by Senator Raikes.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, if you think that this policy approach, this experiment in policy, is unworthy or too damaging to our existing process, I'd suggest voting against the bill. If you think that Cabela's is going to come anyway and we're going to wind up giving money away to somebody who's going to be here and it doesn't make any sense--in fact, we're giving up money that we would otherwise get, and that's your prognosis for the future--I'd vote against the bill. If you think that the definitions are too broad, that the terms are too expansive, and that that can't be resolved in some kind of trimming between now and Select File and Final Reading, I'd vote against the bill. On the other hand, if you want to take a chance at a window of opportunity for this state that other states have made use of, and produced very large investments, very significant growths in employment and an asset which, over time, will yield a whole lot of money to this state because of the sales tax it does, this is a possibility. Now Senator Chambers, in this case, and I are vastly different in how we see this situation. I would suggest this. I'm prepared to throw the dice and to place myself at the mercy of my colleagues and render myself instructed at your conclusions as to whether this is bad policy or not, in which case you'll kill the bill, or you won't advance it. Fair enough. I get that. On the other hand, I'm not afraid of giving this issue to you.



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

I'm not afraid of putting this issue in your hands and living with the result. I'll be happy to live with the result, including that the bill fail to advance. I have no fear of the body; I have no fear of you. Senator Chambers, I think, is afraid of you. Senator Chambers is afraid of his colleagues, and he's afraid of their judgment, because he will not give them the chance to render that. He knows he hasn't persuaded you. He knows his arguments have not touched you to the quick, to the point that the majority of the body agrees with him. And therefore, he cannot permit himself to let you vote on the underlying issue. Well, I'll tell you this. I suppose there's a desire to push us towards use of the cloture vote. I'll reveal...I think Senator Chambers is very good at this, at announcing transparently what his strategy is, and when he announces it, it comes true. Here's my strategy, I'll tell you what it is. I deserve the majority of this body to say I'm wrong or I'm right, the bill is good or it's bad. It's a dangerous idea, it's an unwise idea, it's a badly written idea. Or it's an opportunity for well-being, strength, growth, jobs, and investment. I think the rule should be the majority of the body. Five minutes ago I could have called cloture. I'm not going to call cloture. This body will spend as much time as it wants, or as much time as the Chair will permit, or as much time as the Speaker will allow, to issue this case. But if you want to play to the clock, I'm not going to invoke the clock. Why? Because this body is meant to be a democratic body ruled by the rule of majority, and I will not accept the idea that I have to necessarily be pushed into getting 33 votes. Now I may get pushed off the agenda. All right. But I should get, ultimately, a vote on the bill, and I'm prepared to wait until my opponents get a chance to go through the bill and make their arguments, win whatever fights they want to on the amendment, throw up a kill motion...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...that's successful--fine. But cloture is irrelevant here. Twenty-five votes of 49 is the rule that we're instructed to follow. Cloture is our own rule to solve the problem of the clock, and I'm indifferent to the clock. So if you're trying to talk this to death, it may work between the

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 500

Speaker and the agenda and yourself, but as far as calling the cloture vote, I don't think I should be required to. This is what is before us. If the amendment fails, let's go on to the next one. If there's a reconsideration, all right. But in the end, I don't think I have to volunteer to give for myself the standard of 33 votes, when in a democracy the rule is the majority of those voting. So I'm going to sit down. Every now and then I might call the question, try to move things along a little bit, but it's going to be molasses, it's going to be Old Man River, it's going to be the slowest of the slow, because that's the way it is.

SENATOR CUDABACK: Time, Senator.

SENATOR LANDIS: But don't expect a cloture motion, because I don't think it's appropriate. Twenty-five votes should make law in this state.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Raikes, followed by Senator Howard and five others.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I received an e-mail from a constituent on this very bill, and I thought I would share with you that constituent's comments. He writes, Dear Bozo, (Laughter) I see that you are planning to pass a law that would allow a city or a county to create a 600-acre tourism and entertainment development district in Sarpy County and pay a major sports outfitter to build a huge store there. My client and I think this is a great proposal, and we would like to apply for tax credits to establish a tourism and entertainment development district also. We propose to build a new multimillion dollar outlet in Cass County that we estimate would attract more than 100,000 visitors a year. My client is Eastern Nebraska Auto Recyclers, a large, very successful auto salvage and parts business located in Cass County. I can vouch for that business. If you check my vehicles, they are of the vintage that dealers no longer carry parts, so I go here and buy parts for them. To go on, while representing ENAR in public relations and advertising, I have designed their business cards, placed ads in old car collector publications, and helped haul stocks of

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FLOOR DEBATE

May 18, 2005

LB 500

antique car parts to area swap meets. Unfortunately, they turned down my request for \$10,000 a month to hang around the statehouse and take senators to lunch to promote their cause. They claim that is more than they take in in a month--and that's of course, the connection to this particular amendment. The area ENAR already owns and occupies is much less than the 600-acre district proposed in Sarpy County. We would like to fully enclose the salvage yard and add heat and air conditioning to attract tourists all year round. As it is now, extreme summer heat and winter cold, not to mention rain, snow, and the occasional tornado, tend to restrict the crowds. We estimate these improvements alone would increase customer traffic three-to fourfold. The ability to expand hours into the evenings and weekends could easily double traffic again. We estimate this project would cost \$20 million in state and local tax revenue, and lodging tax revenue generated by the district to finance the construction. We would invest \$20 million and create at least 150 jobs retrieving and dismantling old cars, cleaning, cataloguing, and selling parts, ticket sales, and concessions. Think of the thousands of I-80 travelers who pass through the state daily. Many of these people have a soft spot for salvage yards. They can't drive by one without spending \$100 or more. An afternoon spent combing through piles of rusty parts is more entertaining to them than an evening at the opera. Believe it or not, many enthusiasts will drive much more than 300 miles to shop at a well-stocked salvage yard. The location in Cass County is less than an hour from both Interstate 80 and Interstate 29. Of course, all the additional traffic generated would require that the highways in the area be improved also. We would suggest making Highway 50 a four-lane from I-80 to US 34, and US 34 a four-lane from Lincoln to Highway 50. Developing this tourist attraction is certain to have a ripple effect. We can envision at least one motel and several chain restaurants locating in the immediate Cass County area to accommodate visitors. Many state officials and Nebraskans in general are unaware of the gold mine of old cars and trucks that exist in hedgerows and gullies of our state. Our goal is to mine this resource and export it...

SENATOR CUDABACK: One minute.

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FLOOR DEBATE

May 18, 2005

LB 312A, 478, 500  
LR 12, 223

SENATOR RAIKES: ...to collectors in other states, and even overseas. ENAR's customers have come from Ohio, Wisconsin, Missouri, Colorado, and many other states. Please consider these other advantages to our plan. The project located in a rural area would advance the rural area's development efforts. It would also alleviate overproduction of corn and soybeans, by keeping this land out of agricultural production. I realize some in the Legislature and the public in general dislike creating tourism and entertainment development districts and handing out tax funds to private businesses, but do we have a choice? We need to keep people from going to other states to shop for their old car parts. I thought I would share that. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. Mr. Clerk.

CLERK: Mr. President, I have a priority motion. Senator Brashear would ask unanimous consent to bracket LB 500 until May 23, 2005.

SENATOR CUDABACK: You've heard the motion. Any objection? So ordered. Any items, Mr. Clerk?

CLERK: Mr. President, thank you. Enrollment and Review reports LB 312A to Select File. New resolution, LR 223, offered by Senator Pederson. That will be laid over, Mr. President. And a notice of hearing from the Government Committee regarding gubernatorial appointees. Senator Smith, an amendment to LR 12CA, to be printed. That's all that I have, Mr. President. (Legislative Journal pages 1633-1635.)

SENATOR CUDABACK: The next agenda item under the General File, 2005 priority bills, LB 478, Mr. Clerk.

CLERK: Mr. President, LB 478 was a bill originally introduced by Senator Cornett and others. (Read title.) Bill was introduced on January 13, referred to the Revenue Committee. Bill was advanced to General File. I do have Revenue Committee amendments pending, Mr. President. (AM0863, Legislative Journal page 975.)

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB 478.

SENATOR CORNETT: Thank you, Mr. President and members of the Legislature. LB 478 is a bill that was introduced to attract and retain some of Nebraska's most highly sought after and skilled workers. The taxes we collect because of their residence will more than pay for the fiscal note of this legislation. Further, the industry they would serve is largely recession-proof. LB 478, as introduced, would give military retirees a 50 percent exemption on their retirement the first year, with a 10 percent increase every year until 100 percent exemption was obtained. This exemption would serve a twofold purpose. The first is to show our appreciation for the sacrifice these men and women and their families have made to protect and serve our country. The military is a unique profession in which service members often move up to ten times during their career. In addition, members of the armed services are often separated from their loved ones for prolonged periods of time while on duty in global hot spots that many of us only read about in the news or see on TV. Most of all, these men and women often forfeit their precious times with their families--birthdays, holidays, weddings, graduation, and even the births of their children--in order to stand guard in defense of our nation. The second reason for offering this exemption is more self-serving. As a member of this Legislature, Nebraska knows it has had nearly static population for the last hundred years. Because of this, we are faced with a situation of an aging population and rising Medicaid budget. Nebraska needs to find ways to stop the brain drain that is occurring. We need to develop ways to keep and attract people to our state. Nebraska needs to grow in order to survive. You may question why we would want to keep and attract people that are retired if an aging population is a problem. The reason is simple. The average age for retirement from the military is between 38 and 45 years of age. The men and women of the armed services are a highly skilled and dependable workforce that, upon retirement, often choose to build second careers, which will only benefit our community. Neither they, nor their spouses, will ever be a burden on our healthcare systems. This is due to the fact that their healthcare is permanently covered under TRICARE, which is

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

part of their retirement from the military. Furthermore, by retaining these people we will retain their families. Their spouses will work in our communities, and their children will go to school...to our schools. They will spend money in our stores and pay taxes on their second jobs and the property they own. In the process of researching this bill to present to the committee, I became aware of a dire need in our state for these retirees. As we have heard during floor debate, Nebraska needs to attract industry. That is why...this is what is so unique about the current situation occurring in regards to our retired military. Nebraska has a developing industry in the defense field and currently we lack enough qualified men and women to fill these jobs. Normally, the state of Nebraska is trying to attract industry to employ the people in the state. This is a turnabout where we're trying to attract people to employ in a business. In a survey of available positions in the defense industry that was conducted by the Bellevue Chamber of Commerce, it was shown that there are between 125 jobs that they are unable to fill. This survey was compromised of only 9 of the 33 contractors in the metro area and did not include the contractors in the rest of the state. These numbers also do not include other support industries, such as IT companies, that contract with the military. Because this survey was limited to only nine contractors, the total number of jobs available is estimated to be much higher. The reason that the contractors are unable to fill these jobs is because of Nebraska's tax climate. Nebraska is one of only five states that offer the military no exemptions on their retirement. The repercussions of not offering an exemption are reflected in the exodus of military personnel from this state upon their retirement. They move to states that offer them a more favorable tax climate, and take with them their technological experience, their leadership abilities, their work ethic. In addition, they take with them their families who work in our communities, and their children who attend our schools and universities. This situation poses an immediate problem in our inability to fill needed defense jobs in creating an environment that will force corporate contractors to leave Nebraska. Furthermore, our inability to retain these crucial industries for Offutt could increase the potential for us to lose part of our new mission of Space Command. Already, the military has transferred troops back to



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

Colorado, because Colorado still has an infrastructure of defense contractors in place to support them. If we do nothing to stem the tide of this immediate problem, we could be faced with a real threat of long-term viability of the Offutt Air Force Base. Currently, Offutt appears to be safe for this year's Base Realignment and Closure Commission, also known as BRAC. However, if the situation continues as it is, the potential for mission moving from Offutt is significant. If Offutt cannot maintain missions, this would greatly decrease the likelihood of its being targeted...would greatly increase the likelihood of it being targeted during future BRAC. Offutt is an economic engine that has impact of \$2 billion on our state, and I would dread reading the fiscal note for the state if we lost it. Now is the time for us to determine our future, least (sic) we allow our future to be determined by us...for us. It was because of this immediate need that the Revenue Committee amended LB 478 to its present form. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Cornett. As stated by the Clerk, there are committee amendments. Senator Landis, Chairman of committee, you're recognized to open on AM0863.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, there is a bill that has come to us year after year from military retirees asking us to exempt a portion or all of their retirement income, and it's never made it out of the Revenue Committee because it starts a particular kind of an argument, and the argument is whose pensions deserve to be untaxed because of their service to the country and what they've done for the public sector, what they've done for the public generally, what kind of a contribution have they made to society. And we can envision that, once it's military retirees, it could be people who have been in military service but retired from a private pension. From there it could probably well be cops, and from there it could be firefighters, and from there it could be teachers, and from there it could be somebody...it could be all kinds of people. And the bill has never come out because it starts a particular kind of an argument about whose pension is more deserving of exemption than others. And so the bill was deadlocked until we had a body of evidence that Senator Cornett brought before us that readjusted the thinking of a working

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

majority of the committee so that we were not trying to place an imprimatur of thanks or congratulations to some but not all of the many deserving people who have contributed to this country in one way or another. What we discovered was that there are a body of particularly high-paying, highly mobile jobs that can come to the Omaha area or can drift away in a moment's notice, and that the essential element of getting the jobs to be here rather than someplace else is the existence of a labor pool. The labor pool that is ideal is a labor pool of people who have had security clearances. The security clearance, to be replicated in the private sector, is roughly an investment of \$60,000 by the company. But if you can hire somebody who has essentially a security clearance, you don't have to invest that money to get to the same place that a private sector person would have to come up with in the way of training effort, background costs, or whatever to replicate what for a defense contractor is achieved by somebody who has a security clearance. Where are there a group of people who would like to work and have security clearances? Well, around Offutt Air Force Base. They're retired military personnel. However, because Nebraska has never started that race with other states to make our military retirement program here different from everybody else and more attractive than any other state, we are one of only about five or six states that offer no assistance to military retirees of any kind. Makes us an exception. What we do with this amendment is to incent companies to be here by trying to achieve for them an aggregation of a labor pool that is very mobile. Oddly enough, the labor pool is a relatively well-to-do labor pool. They are...they're already getting retirement and they're going back into the marketplace and they're going after a high-paying job. These will be high-paying jobs. Why don't we give the incentive to the company itself rather than to the employees? Because the missing piece of the puzzle for the company is not land. It's not fixed costs. It's the existence of the labor pool. What they most need is the labor pool. Therefore, it doesn't work to use a traditional incentive to the company for these defense contractors. What we need to supply for these defense contractors is a body of folks who want to work, who have Defense Department clearances, and who are available for full-time work. And those happen to be military retirees, and we have them. However, we're not a place that's

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

attractive for those people to stay once they fully retire and are out of the marketplace because we don't give breaks to those retirees. It is not that we want to get in the business of giving something to everybody in this bracket, but it is the case that we want to establish the labor pool for defense contractors. Why? Because there's a synergy with Offutt, because it feeds back to Offutt as a place to stay open, and because the defense contractors are incredibly mobile as a group because most of them are doing work in the software area. It makes them as mobile as drainage water. They will go to the place of lowest resistance, and those places are not Nebraska, now, if we don't make some adjustment to try to get our high-wage, retired, working military retirees into these defense contractor jobs. The committee amendment says this. It strikes the percentage exclusions. It provides the military pension is exempt in one circumstance. It's exempt only to the extent the recipient has earned income...which means they're working. We're not paying people to be retired; we're paying people to work while they could otherwise be retired. But these are people who want to go back to work. Has earned income from a security qualified defense contractor. Not in every job, but in a particular kind of field that is very, very susceptible to the marketplace, to the labor pool, to working conditions, and to the mobility of all the elements that go into economic development. So it's for somebody who's working in this field and making in excess of \$40,000. Why? Because \$40,000 is an entry level for these kinds of positions. What we want to reward are people who are paying above that. And what we say is, for the money above \$40,000 annually, the bill would exempt \$1 of the pension income for every \$2 of such wage earned in excess of \$40,000. It's paradoxical. We're going to be paying...we're going to exempt pension from a high-wage employee, but the goal for this is to establish a labor pool for a very attractive style of business that we want to fit in the Omaha area, to surround Offutt, to ensure the existence of Offutt, because of the synergy of the defense contractors to the base itself, to take software companies which can locate anywhere very easily and give them the labor pool that they need. Understand there are a number of states, and Texas among them, who either have no income tax or they have total pensions for military personnel, and when that happens, those are very

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

attractive places to go. If we do not make an adjustment for this kind of worker, the defense contractor will not be able to find them here. We have literally a hundred jobs, very high-wage jobs, going abegging until we can find the people to fill them. And to make that find we have to link people to those jobs, and we do it with this amendment. I would ask for the adoption of the committee amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the opening on AM0863, offered by the Revenue Committee, Chairman Landis, Chairman, to LB 478. Open for discussion. Senator Brown, followed by Senator...

SENATOR BROWN: Mr. President, members, I was a military kid. My father is from...was from a little town called Mullen. My mother was from a little town called Halsey. I lived in a different place every year from the time that I was born. I was born in San Antonio, Texas, and I lived a different place every year until I got to my...till I started junior high, sixth grade I guess was...and lived then in one place until we moved back to Nebraska. What I know about military personnel is that they can...they don't have the same connections to a place. Their connections are to the people that they work with, to their families if their families are in a place. Like, our family was Nebraska, so my connection was to Nebraska. But I don't think my parents ever intended to retire in Nebraska, although we owned land up in the Sandhills and at one point looked at buying a house there. My mother moved back here after my father died so that she could be closer to her family, but military personnel make decisions about where they're going to live on a lot of aesthetic reasons, places that they've been that they liked, they've served that they liked. They make decisions based on where the job opportunities are good and they make decisions based on taxes and where they can make their retirement go the furthest. And because they are people that have moved around a great deal, they know where the opportunities exist. We just...probably the most significant economic event in the state of Nebraska for the last 20 years was the decision of the Base Closing Commission and Offutt actually gaining some positions. A lot of the decision making of the Base Closing Commission revolves around the supportive

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

services that a base has, and so the defense contracting industry, which we've added to significantly since the STRATCOM decision to move jobs here, the stability of employment for those defense contractors is very important. I think that this bill offers a lot of challenges, more than the previous bill that we were discussing, in terms of fairness. But most other states have made policy decisions about military personnel. We do a lot of things for military personnel that we don't do for other kinds of industries, because those people sacrifice so much for the country, and during the time that they serve, their life situation is not, even apart from war and things like that, is not entirely stable. And so a lot of states have been quite generous from the standpoint of keeping them or attracting them to the state, but also in an appreciation of the service that's been provided.

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: One minute.

SENATOR BROWN: And I think that this is an issue that we need to look at. It is something that when we first started getting letters about that, about it, when I first came into office, I was totally unsympathetic to the situation. I've done a lot of research. I've done research with some of the defense industry executives about what difficulty they have in attracting the workers that they need. If we can point to one thing that has helped us develop our technology in the state of Nebraska, it is the spin-off of Offutt and the spin-off of the defense contractors, the number of people who contribute to our economy in a myriad of ways. And I think that with the committee amendment, we have narrowed the...

SENATOR JANSSEN: Time.

SENATOR BROWN: ...impact of this in a way that makes it much more defensible. Thank you.

SENATOR JANSSEN: Thank you, Senator Brown. Senator Landis, your light is on next.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR LANDIS: Mr. Speaker, members of the Legislature, the A bill with this amendment is about \$500,000. If we were to assume that that means the taxes that we would forego, the only way that we would do that is because, if we were to pick, let's say, 200 people as a number, there would have been \$8 million of income before there would have been a dime of the exemption. So there would have been \$8 million of income for which income taxes would have been paid. Then the exemption starts to kick in, but at \$2 of income for every \$1 of exemption. At \$500,000 of tax exemption, that winds up being \$20 million of income which you would have to have to get the tax savings. So at a foregoing of \$500,000 of retirement pension taxes, we would get roughly, at a minimum, \$30 million of income to workers which would be subject to Nebraska taxation. We don't wind up losing money, not at \$30 million of income which is subject to the income tax at its highest levels, by the way, because these are high-level wages, because we happened to forego \$500,000 of pension taxation. What I'm saying is the bill pays for itself by creating high or creating the conditions for high-wage jobs for which there will be plenty of income. What this does is it keeps people who could be on retirement in the workplace at high-wage jobs. There are now over 100 of these jobs that are unfilled, and they won't stay here long if it can't get filled. They will go someplace else where they will be filled because these are mobile companies. I ask for the adoption of the Revenue Committee amendments.

SENATOR JANSSEN: Thank you, Senator Landis. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. As I sift through the issues in the bill, I must say that I rise with great concern on the committee amendment. Perhaps it's because of the geographic proximity of my district to the geographic proximity of those who will benefit with the committee amendment. I can understand the intent. I can understand the need. I, however, think that narrowing it the way it has been narrowed is problematic. I know it's intended to help the defense contractors, and they do good work as far as I'm concerned. But I think we as a body need to understand that if we're going to help, attempt to help, someone along the way, it needs to be applied in a broader manner. It's interesting. In



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

some discussions off the floor today we were talking about constitutionality and closed classes, and who benefits and who doesn't, and this is fair and that isn't fair. And perhaps this is crafted in a constitutional manner, but I do have...and call me selfish, that my constituents will not benefit from this, even though we have retired military and teaching positions. They're teachers. They do good work as teachers. Teachers are needed. In fact, there's a shortage in several cases. In fact, I can think of a math teacher right off the top of my head who is a military retiree who I think should qualify. If someone working for a defense contractor in Sarpy County qualifies because of their military retirement mostly...I mean, really we're giving credit to military retirees as the highest priority, but it was too much money to give all Nebraska military retirees the break, so we narrowed it down to try to leverage, if you will, to try to leverage and get the most bang for our buck, so to speak. But let's think about the rest of them across the state. Now I don't know how many defense contractors there are who require the clearance for their company, and I appreciate Senator Cornett's work on this. I know she's done a lot of work on it, but I will probably support LB 478, the green copy, because that's applied fairly across the state. And I know it has a higher price tag, but I think that it's more relevant, more fair and more appropriate as public policy than to try to winnow it down in a manner so as to lower the price tag or reduce the price tag, but yet what have we done in the process? This isn't truly an exemption for military service. Well, I guess it is if you work for a certain company needing the clearance. Or does just obtaining clearance, is that good enough? I'm not sure. I'm not asking a technical question yet, but I do toss that out for consideration. But, call me selfish, I don't see how this is a good policy with the committee amendment. I plan to vote against the committee amendment and in favor of the bill. Thank you, Mr. President.

SENATOR JANSSEN: Thank you, Senator Smith. Senator Engel.

SENATOR ENGEL: Mr. President, members of the body, I, too, have concerns with this amendment where it picks out this select group because they have those clearances. And I realize how long it takes to get a clearance. When I was in the service I

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

had clearances, and when I got out of the service I was offered several jobs, CIA and so forth, because of those clearances. I did not accept any of them, but that's different than what we're talking about here today as far as this group in Omaha. And I do believe that is...they are a valuable asset to the community of Omaha and, of course, at Offutt there. But the only thing is, these defense contractors, you know, when they make their bids for these defense contracts, they bid them to the point where they can pay good wages. As far as I'm concerned, instead of us giving tax deductions for these particular people, with these clearances, I think these defense contractors, if they want these people to go to work for them, pay them appropriately. Pay them extra so you can entice them here. I don't think we should entice them through forgiving their income tax. And again, you're picking just a select group. If you're going to do this, go across the board--all military retirees. I am not a military retiree. I'm not drawing any pension so it's nothing to benefit me, but if you're going to do it, do it for all of them. Then I kind of wonder whether we can afford...whether we can afford the price tag. Because, like Senator Smith said, we have other shortages in our state. We have a very dire shortage of science teachers and science professors in our education system, so should we exempt them from paying income tax so that we can entice them to stay here in Nebraska or come to Nebraska? And the answer is probably, no, we won't do that. So I think we are picking a very select group, and once you pick one select group, where is the next one going to come from? There's going to be another shortage over here, a shortage over there. And if you're going to treat this group this way, then you're going to have to treat that...in order to be fair, you have to treat the rest the same way. And I don't think you're ever going to...ever be an end to it. So I oppose this amendment, and I'm not sure I even support the bill because of the...because of the price tag. However, the bill itself, without this amendment, is certainly much more fair. Thank you.

SENATOR JANSSEN: Thank you, Senator Engel. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I rise in support of the bill and the committee amendment

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

as drafted. The question that is before us is whether in fact we want to develop a growing industry in Nebraska. I say growing because it's really very small. In fact, out of all of the 50 states, we rank 44th in the number of contracts that we have from this kind of defense contractor. So do we want to develop new industries? We talk about losing population. We talk about losing jobs. We talk about losing our college graduates. And we have an opportunity here to open the doors to an entirely new industry for the state of Nebraska, and we can take the opportunity or we can let it go and let another state have it. Now I think that when we're looking at the type of jobs that they provide, paying \$50,000, \$70,000, and over \$100,000 a year, that's very enticing to the citizens of the state of Nebraska. I was looking at the payroll for Offutt, and it was interesting. Military members on and off base, \$336 million a year. And yet, when you look at the spending on the base exchange and the commissary, it's only \$25 million. Where are they spending the rest of their money? They're spending it in Nebraska. They're spending it in our stores. They're spending it on homes that they're buying in other communities around the state. If you look at the demographics, you'll see that they're not all located on the base, they're not all located in Bellevue, they're not all located in Sarpy County. They are across the spectrum of this state and I think that they have served us well. Whether in fact we want to open the door to one type of retiree, I think that's an issue. We talked about it in Revenue Committee, whether in fact it was fair to look at just forgiving the income tax burden for the military retirees and not look at the income tax burden on the retirees from our law enforcement, our firefighters, our teachers, our state workers, and a number of other people who have sacrificed for the citizens of Nebraska, and many of them have risked their lives as well. That becomes unaffordable when we start going down that line. But I do think that we can do what Senator Cornett is asking us to do, which is an economic development tool which actually brings us in dollars in income taxes before we ever forgive a dime of income taxes. The price and the time limit for earning this kind of security clearance means that we can't find these workers anywhere else but in the military. Do we want to go there or not? Well, I think we do. Because when you look at communities that have gotten into this

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

kind of development in defense contractors, you find that you build a whole different kind of business climate. The skilled workforce is trained by the large companies that are located in the areas. The demands that these companies and their smaller counterparts make on the labor market encourage local workers to develop skills in technological areas. Demand also makes it worthwhile for local vocational-technical schools to develop appropriate training programs. The depth of the local base of skilled workers, in turn, makes it possible for entrepreneurs to hire employees they might not otherwise have the resources to train. The large companies and the universities, in turn, continually spin-off other small companies generally founded by researchers who have an idea for a product that they choose to develop on their own rather than within the environment of the larger firm. While some of these new companies fail, enough succeed and grow to increase the concentration of firms in the area. Finally, the rapid growth of smaller companies with new products attracts the development of venture capital firms that specialize in identifying and providing capital and managerial advice to new and expanding technology-based...

SENATOR SCHIMEK PRESIDING

SENATOR SCHIMEK: One minute.

SENATOR REDFIELD: ...companies. It is not surprising that we have seen growth in the states that have attracted these kinds of industries. Do we want to open the door or not? Do we want to become a spill-off community? It's not going to just be located in Bellevue. Spin...spillover communities are those located adjacent to high-tech centers or diluted centers. We see a competitive labor market raise the prices for labor and wages across the state and in the area. I think we can impact our marketplace. I think we can provide good jobs for our students to stay here after they graduate from our institutions. I support the committee amendment and the bill. Thank you.

SENATOR SCHIMEK: Thank you, Senator Redfield. Senator Cornett is next, followed by Senators Erdman, Connealy, Brown, and others.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR CORNETT: Thank you, Madam Chair and members of the Legislature. Senator Smith brought up that his concerns were selfish, that it didn't benefit his community in the amended form. Obviously, I support LB 478 in its original form, but the committee amendment is what the Revenue Committee felt the state could afford at this time. This amendment addresses a specific need the state has. One of the things that was touched on earlier was something called BRAC. It's base realignment and closure. One of the things that they...they have multiple criteria when they look at base closing. One of them is encroachment, two of them is housing issues, and the third is support industries. I'm going to read a segment of testimony that we had at the committee meetings. The 55th Strategic Wing and STRATCOM will become more and more dependent on contractors as force structure changes recently announced by the Department of Defense and STRATCOM replaces uniformed military with contractors. These changes will become more evident as Congress, the DOD, and the executive branch of government completes the BRAC, base realignment and closure, process. The military is undergoing changes never before experienced. Unfortunately, the defense industry was not included in the target industry study that Deloitte & Touche completed for the Nebraska Department of Education and Development, December of 2000, an updated...and updated December 30, 2003. I say this is unfortunate as the defense industry meets many of the objectives of the Deloitte & Touche study, and goals outlined in the study include focus marketing efforts on industry that makes sense for the state. Defense contractors make sense for the state of Nebraska because of Offutt Air Force Base, Unified Command, and Space Command. Focus business development efforts on value-added industries that enhance the state's wages. Defense contracted jobs are much higher than the state's medium wage. The medium wage in the state of Nebraska is approximately \$34,000. The average wage for one of these employees is \$65,000. That's where we came up with the numbers that we base the amendment on. Entry level is approximately \$40,000. Build on the existing industry base of the state and identify new targets, can draw on existing resources. The defense industry is an existing industry and I consider it a new target industry based on the dramatic changes that are being made by outsourcing more requirements to defense contractors. Partnering between

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

industry and the Nebraska university system; creation of jobs to keep youth in Nebraska in the state following graduation from the university system. Senator Pederson recently mentioned an out-migration of Nebraska's youth during a recent meeting with university Regents. Governor Heineman was quoted by the Omaha World-Herald as stating, his State and (sic) the State Address, that among state's biggest challenges is a population that is stable but aging. To prosper, he said, the state must expand its economy and establish more education and job opportunities to attract and attain young people. When we talk about these jobs, we are talking about very technical jobs that the average citizens cannot or are not qualified for. They also are not qualified because they require security clearances. This amendment addresses the issue of the need of these jobs to be filled. With the realignment, we received Space Command a few years ago from Colorado Springs. Because these jobs have been unable to be filled and because we do not have the support industry in place, they have already started deploying troops back to Colorado Springs, which does affect the state of Nebraska as a whole economically. We lose those people's jobs, their income, the property taxes they pay if they live off base.

SENATOR SCHIMEK: One minute.

SENATOR CORNETT: While I...again, while I want to reiterate that, yes, I support LB 478 and I do plan on reintroducing it again in its original form, the committee amendment is what the Revenue Committee felt the state could afford, and addresses an immediate need that we have this year, and I encourage you to support the committee amendment. Thank you.

SENATOR SCHIMEK: Thank you, Senator Cornett. Senator Erdman, you're recognized to speak.

SENATOR ERDMAN: Thank you, Madam President. Members of the Legislature, I'm in the process of gathering the details of what the committee amendment does, and I think I understand a little bit about Senator Smith's comments, and I'm getting a better understanding of Senator Redfield's position. As I understand...and maybe Senator Cornett would yield to a couple questions so that I can be clear.



TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR SCHIMEK: Senator Cornett, would you yield?

SENATOR CORNETT: Yes.

SENATOR ERDMAN: So, Senator Cornett, the amendment narrows the scope of the bill generally to individuals who have a security clearance, work for a defense contractor, and then the benefit comes on the salary that's above the \$40,000 threshold. Is that correct?

SENATOR CORNETT: Correct. In committee hearings it was testified to that the average or the entry level wage in these positions was approximately \$40,000, and that's where the committee came up with that baseline.

SENATOR ERDMAN: Okay. And so the scope of the bill, and I've asked your legal assistant there to...legislative assistant to try to find this number, we're narrowing it from a percent of veterans, which is probably close to, you know, a majority, down to a certain percentage, and I'm interested to find that, but I think that's important. Do you feel comfortable with the numbers that have been given to base the fiscal information on as far as the actual impact of LB 478? And then what is the difference on the impact between the committee amendment and the actual green copy?

SENATOR CORNETT: Well, to answer the first part, I have somewhere in my stacks of information, testimony that disputes the original fiscal note; that it would be much lower than what was originally figured. But I am comfortable with the fiscal note with the committee amendment, if that's what you were...if that was the gist of your question.

SENATOR ERDMAN: Right. Right, and that was some of the same comments that I had received from individuals questioning some of the assumptions, if you will, made in the original bill. And as a cosponsor of the original bill, I was understanding...trying to understand the difference. But I appreciate your willingness to answer the questions and I will continue to try to gather the information I need. Thank you.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR CORNETT: I'd be happy to answer any questions.

SENATOR ERDMAN: Okay.

SENATOR SCHIMEK: Thank you, Senators Erdman and Cornett. Senator Connealy, you're recognized to speak.

SENATOR CONNEALY: Thank you, Madam President and members. I appreciate Senator Cornett's ability to work with, you know, kind of a moving target. She brought in to us a broad exemption and we ended up now with something that's quite different. Now it's a...really, a jobs bill, and it's a jobs bill targeted to a specific industry that we don't have a real way to help in our other proposals. And so I appreciate Senator Cornett's willingness to take a little bit of what she had originally and work in more of a focused area. We have an industry that is mobile, as Senator Landis talked about, and is a high-tech and high-clearance industry, and they are a different animal than we have had here in Nebraska in the past, I think, and being able to help them, or at least attempt to help them, I think is probably a good thing for the Offutt Air Force Base and a good thing for the Omaha area in general. This is a benefit that will actually pay the state, I think. First of all, you got the \$40,000 exemption first that doesn't qualify, you have to make that much, and then it's a two-to-one above that. So if someone is a highly paid military person retiring and then going to get a highly paid job afterward, you could have a \$40,000 retirement which would be exempt, but to get that you'd have to have an income of \$120,000 that you would pay income taxes on here in Nebraska before you can get that exemption. And so I think that, as you look at this, from the first entry level that has to pay taxes on \$40,000, up through \$10,000 of deduction, which would be you're paying \$50,000, or \$60,000, I should say, on up to wherever it ends up, it's a good deal for Nebraska. It will actually make money, I think, if we can generate new employment here and help this really new industry in Nebraska. So first of all, I want to support the committee amendment and thank Senator Cornett for bringing this.

SENATOR SCHIMEK: Thank you, Senator Connealy. Senator Brown,

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

your light is next. I don't see Senator Brown. Senator Thompson.

SENATOR THOMPSON: Thank you, Madam President, members of the body. This bill that originally came has come every year since I've been in the Legislature. Senator Hartnett carried it before. This year it's taken on a slightly different twist because, beyond the issue of keeping retired military in the state because their pensions aren't taxed, which has been the primary reason for this bill before, we've now narrowed it slightly, but it also has come at a time when we're trying to recruit some key people to the state who bring with them the jobs that go to the defense contractors that are needed to support our military base and its mission. And I support the bill because this...it's narrower now. I've always supported it, but I also recognize, those of you who have been speaking on it, the concerns that you have about other types of professions that may also deserve a tax-exempt...pension exemption from taxation. But in our community, which is heavily military and also retired military, we have a great group of people that, if we can encourage them to stay in our community, they have tremendous education, training. They bring a lot to a lot of employers in the metropolitan area and throughout the state, but we can't afford all that and we know that. This is a strategic bill in that now it is directed at a very critical part of the economy where we need to recruit people to the state that have these clearances. I don't want to belabor what's been said before, but this is a real important strategic objective that we can have in terms of economic development to recruit the people to the state and retain the people in the state who can support these very important missions of the base and of our military. And if we don't do this, we put them at risk of not being able to recruit to the state. This is going to have a tremendous possibility for us of increasing the amount of work that could be done at our base, that can be done for our nation's defense. And we need to do the things and have the tools in the toolbox to be able to attract the people who have these clearances so that we can, number one, support the economic development of the state in a way for those kinds of jobs, those high-paying jobs that we want to attract, but also to support overall the work that Nebraska has contributed to the defense of this country.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

And I urge you to support the bill, as amended.

SENATOR SCHIMEK: Thank you, Senator Thompson. Senator Combs is next, followed by Senators Foley, Preister, Redfield, Smith, Cornett, and Mines. Senator Combs.

SENATOR COMBS: Thank you, Madam President and members of the body. I rise in support of the Revenue Committee amendment and the bill. I wanted to give a little background that I got from some information that...regarding Offutt Air Force Base. And in case some of us are not aware, Offutt Air Force Base is the third largest employer in our state. That was a surprise to me. It's facing unique challenges within the defense industry right now. President Bush and Secretary of Defense Rumsfeld have expanded the mission at STRATCOM, the global missions of information operations, integrated missile defense, intelligence, surveillance and reconnaissance, missile space operations, global strike, and combating weapons of mass destruction were all assigned to STRATCOM, in addition to their historical responsibility for deterrence. The success of these missions will be largely dependent on the direct support of our local and national defense contractors and subcontractors, who must be able to provide a specially trained workforce. What type of workforce is required? The ideal candidates possess years of military training in space, missile defense, network operations, and warfare, global strike, or intelligence/surveillance/reconnaissance. Along with this valuable experience is the necessity of holding the top-secret or secret security clearance, which enables the employee to immediately begin work. And the term "work immediately" is really crucial in the defense industry. When a contract is awarded, the winning company does not have a flexible time frame to add to their employee base like you would in other industries. When you call the registry and ask for a nurse for the night shift, you pretty much have a good chance of filling that need for that position. Not so with STRATCOM. Work begins immediately, and usually within the space of weeks. To remain competitive in the national scope of contract building, the local defense industry relies on strong recruitment base in Nebraska. The recruitment of retiring and separating military professionals who possess the specialized training and security

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

clearances necessary to perform the jobs is really fierce. Companies from across the nation and the world are competing heavily for this specific pool of talent, like I mentioned before how very specialized they are and rare. Our most direct competition comes from the defense industry based in Colorado Springs, Colorado. The missions at Peterson Air Force Base in the Springs and Offutt Air Force Base are strikingly similar and require the same skill sets. Unfortunately, the state of Colorado has an edge on Nebraska on workforce development and recruitment in the defense industry. What do they have to offer that we don't? Number one, a very desirable location to retire to after military service; a scenic tourist destination, complete with mountains, trees, access to large metros, recreational opportunities, professional sports teams. Adding to the equation is an excellent school system and lower taxes. Colorado's recruitment advantage is the tax incentive to their retirees. The state of Colorado exempts the first \$20,000 in retirement pay. So there are some states that do it not the entire amount, and some are incremental. This is an attractive offer to the military professional embarking on their second career. The state of Nebraska is at a serious disadvantage when it comes to recruiting this highly trained and specialized workforce. If we want to attract and retain this specialized field, we must provide a serious incentive. The defense industry commands the higher level of professional salaries which are desirable for Nebraska's economic future. And, like was mentioned earlier, when these guys come or people come, they're in their late forties, early fifties, generally. They're bringing spouses along, who are also working, also paying taxes, also using their...

SENATOR SCHIMEK: Time.

SENATOR COMBS: ...salaries...

SENATOR SCHIMEK: One minute.

SENATOR COMBS: ...also using their salaries to purchase goods and pay property taxes and lots of other things that will hopefully more than offset the carrot that we're giving them to come here, because, frankly, we don't have as many carrots as

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

our direct competitor. And I know when I'm competing in a labor market to get employees, you must offer something the other guy doesn't or, you know, some other kind of little benefit that is going to get them to choose you over the other person if you have any hope of keeping your place staffed. So, as we said, we have important missions at STRATCOM, at Offutt, that we are directly responsible for to the President, and that makes this even more essential that we keep these highly trained people here in Nebraska. Thank you.

SENATOR SCHIMEK: Thank you, Senator Combs. Senator Foley, you're recognized to speak.

SENATOR FOLEY: Thank you, Madam President and members. I, too, want to thank Senator Cornett for her work on this bill. I was a little bit slow in pushing my light, so a lot of the points that I would have made have been made very well by others, but I'll just repeat a couple of them briefly. Senator Cornett circulated to us a World-Herald article that points out that Nebraska is only one of five states that continues to fully tax military pensions, and she's brought forth a bill that's been heard before the Legislature a number of times in the past but never seemed to go anywhere. And through her willingness to work with the committee on this committee amendment, I think they've come up with something that's very creative and it's going to be very beneficial to the state, so I commend her for her work. And I think Senator Landis makes a good point. This bill can actually pay for itself or even more than pay for itself because it's rewarding and incentivizing those employers who are paying on the...paying wages that are considerably above the statewide average, and giving a tax break only in those instances when they do pay these higher salaries. Senator Redfield makes a good point that this is going to incentivize a new industry to grow here in Nebraska. It's an industry that could play a very important part in our future. So again, I want to thank Senator Cornett for her work. I'm going to support the committee amendment and support the bill. Thank you, Madam President.

SENATOR SCHIMEK: Thank you, Senator Foley. Senator Preister, you're recognized to speak.



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR PREISTER: Thank you, Honorable President, friends all. I stand in support of the committee amendment and then, if that's adopted, Senator Cornett's bill itself. I think it's important that we make the distinction because the committee amendment obviously has differences from the bill, but they take two very differing approaches. Senator Cornett did her best. She came into the committee championing the cause of providing a benefit to all retired veterans in the state. She was organized. There were, I think, nine or more testifiers that were there in support of her concept; no one who opposed it. She was continuing a tradition that Senator Hartnett started of introducing this legislation, and he was unsuccessful, having served here for 20 years, of getting that bill even out of committee. Senator Cornett did everything humanly possible to get the bill, in its original form, out of the committee, and she certainly worked on each committee member. She did her homework. She was organized. Just as she has handed out an organized packet of information that we have here on the bill now before each of us, she did in the committee and to those committee members. But she's also a realist. She knew that the bill, in its original form, was not going to advance from the committee, partially because of the fiscal note and the amount of money that we would be losing in revenue. That was one of the reasons that it couldn't make it out this time and part of the reason it has not made it out in the past. The second reason is a fairness issue, and Senator Engel was talking about being fair. Well, if we did forgive military retirement income then, Senator Engel, should we also do the same for retired police officers and county sheriffs, because they, too, put their lives on the line for us? And then should we also do it for firefighters? They, too, put their lives on the line in protecting us. We begin then to go down that road of forgiving a host of other deserving individuals their retirement income from having put themselves between us and harm's way. So then we lose a tremendous amount of revenue and, yes, Senator Engel, we could not afford to do that. The fiscal note then grows higher. So the committee has chosen year after year not to advance the bill, and that was the same dilemma that Senator Cornett was faced with. But we are in the position this year of doing economic development packages so, realistically, to try

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

and get something out of the committee, Senator Cornett sought a compromise to do economic development and to at least have that component get out of the committee and to be able to help the defense contractors to be able to provide these jobs and have people to fill those jobs in her district. And again, Senator Engel, these are good-paying jobs and, as both Senator Landis and Senator Connealy said, the base before this would even come into play would be \$40,000. These jobs would pay well over \$40,000 per job before the provisions of the committee amendment would even go into effect. So Senator Cornett's original bill was a bill to reward veterans.

SENATOR SCHIMEK: One minute.

SENATOR PREISTER: She's going to continue to pursue that. The committee amendment is now an economic development tool, and that's what we're looking at, not a reward to veterans. This is an economic development incentive bill as the committee amended it, and that's essentially what we're looking at--an opportunity to provide incentives to keep people here who have security clearances to work in these defense contractor positions. And those folks can go anywhere in the country and demand this salary. With the committee amendment, we're trying to keep them here in Nebraska and save the cost of providing the \$60,000 cost to get those security clearances to these defense contractors. There is that distinction and that's what I wanted to bring to your attention. Thank you.

SENATOR SCHIMEK: Thank you, Senator Preister. Senator Redfield, your light is next.

SENATOR REDFIELD: Thank you, Madam President, members of the body. I want to tell you that when we look at a military base we think about military people, and when you look at the payroll, in fact, it's true there are 8,481 military members that were assigned to Offutt in 2003, but there were also civilians that worked on the base. There were 2,019 civilians from Nebraska that were employed there; in addition, another 1,553 other civilians who were employed on the base. So 3,500 Nebraskans had jobs because that base is here. Senator Cornett has a legitimate concern. Every time we hear the federal

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

government talk about base closings, we don't ever want to be on that list. But one of the other things I looked at was the payroll for service contracts for other entities who are not civilian employees on the base, but people who come in and provide all kinds of services--buildings and grounds, utilities and energy, information technology, laundry, the hospital people, mess attendants, MRIs, transient aircraft, marriage counselors, social workers, medical transcriptionists, postal service centers, a base library, counterintelligence, facility engineer, other services and communications--to the tune of \$209 million a year, Nebraska companies getting work in Nebraska. The impact here is enormous. We want to make sure we keep the base here. Do we want to grow the industry? Well, I think we want to because it says here that the rapid growth of local firms tends to push up land and labor costs. Now, what does that do for government when land costs go up? I hate to tell you, but it means more property taxes. It means that our schools have more taxes to do their job. It means cities and counties and NRDs and ESUs and all of the other taxing entities have more money to do the job that they have to do. What happens when labor costs go up? Well, it means that we don't have to worry about Senator Beutler's bills to raise the minimum wage because, as the labor costs go up, it brings up everyone, and we in fact see that our income tax receipts at the state level will increase, and that's good for Nebraska. Well, what happens in an economic downturn when you see some layoffs? One of the concerns I've always had about the high-tech triangle in North Carolina or industry like we saw in south...San Francisco in this last economic downturn, and there were all kinds of empty businesses there, offices for rent, because of the concentration of particular industry. Well, this isn't a particular industry that only services one type of job. They're not only designing software. They're broader than that. We're talking about engineers. We're talking about IT. We're talking about a lot of high-tech. And in fact, what they have found when there was a downturn, that because the installation created a local base of researchers and skilled workers that all the spin-off activities kept the economy going in that area, but the layoffs, even with Boeing in Seattle, program cutbacks at the Kennedy Space Center in Florida, and staff reductions that occurred in Redstone Arsenal in Huntsville, Alabama, all

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

resulted in intensified development efforts, usually directed at technology-based companies that took...could take advantage of the skilled workforce that were released by the installation. So in fact, we create a pool of workers that makes Nebraska more attractive to other companies to come here and diversify. So we're not just talking about defense contractors in the future. I think we could see a number of spin-offs. I would be happy to give any remaining time that I have to Senator Cornett.

SENATOR SCHIMEK: Thank you, Senator. There is one minute left, Senator Cornett.

SENATOR CORNETT: Thank you, Senator Redfield. I just wanted to address the issues that Senator Engel raised on bringing...paying these people competitive wages. It's not that the companies in Nebraska aren't trying to pay competitive wages. It's that Nebraska is, to reiterate, is one of five states that still fully does not exempt military taxes. We are trying to support homegrown companies. While a lot of these companies are large multinational corporations, like Lockheed Martin and Northrop Grumman, we also have a number of start-up companies in Nebraska, such as McCallie Industries (sic), Spiral Solutions. And when you talk about the competitive wage, if you're offering someone \$65,000 to live in Nebraska, where we don't have the amenities and we tax your military retirement, compared to Colorado, which exempts partial...

SENATOR SCHIMEK: Time.

SENATOR CORNETT: ...military retirement...thank you.

SENATOR SCHIMEK: Thank you, Senator. Senator Smith is next, followed by Senators Cornett, Mines, Jensen, Stuhr, Brown, and Chambers. Senator Cornett...or Smith. I'm sorry. Senator Smith.

SENATOR SMITH: Thank you, Madam President. I want to point out to the body some realities across the state. There's some realities that the other end of the state, opposite from the beneficiaries of the committee amendment, there are lower wages, there are fewer job openings. Those are just realities, Senator

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

Redfield. And we have before us something that is so targeted that I would argue that those who need it even more than in the urban areas of Sarpy County won't get anything. I would like to see us look at something using the same concepts of phasing in the exemption; start at a lower point, stretch it out over a longer period of time so that we can phase it in on a fair basis. For us to think that this is going to benefit so greatly, I just have a hard time understanding that. And actually, if Senator Cornett would yield to a question, I wanted to talk about the committee amendment just a bit.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Senator Cornett, would you yield?

SENATOR CORNETT: Yes.

SENATOR SMITH: Senator Cornett, on the committee amendment, I think it said that it's a \$40,000 threshold for those who will receive the benefit, right, above that?

SENATOR CORNETT: Yes.

SENATOR SMITH: Now...so if there was determined to be a shortage of workers for the \$35,000 threshold, that wouldn't apply, the exemption would not apply?

SENATOR CORNETT: From what was...what we received in regards to testimony and written documents, that the entry level for these positions that we're referring to is \$40,000, and that's why we set it at \$40,000.

SENATOR SMITH: But those military retirees making less than \$40,000 then...so no one would qualify, though, or there's no one out there with a job that pays less than \$40,000. Is that accurate?

SENATOR CORNETT: What was...what we received in the committee in regards to testimony from the companies that are interested in the military personnel, the entry level wage that they have is \$40,000. The average is \$65,000 and they range upward to

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

\$185,000 for these jobs.

SENATOR SMITH: Okay. Thank you, Senator Cornett. And I'm glad that there is a need in Sarpy County for workers. That's a good problem to have (laugh), a really good problem to have. I wish that that same concept applied across the state. And we do have some needs for workers across the state, but certainly in a different manner. And I want to emphasize the fact that a better way to go about this would be a slower phase-in. I think that is much more fair because...I wish, being involved in the real estate business, when I started several years ago I wish that I'd have kept a list of all those folks who have left the state because of our tax burden. We are close to other states, Wyoming and South Dakota primarily, who don't have any state income tax at all. That is a big issue. And if we really want to address worker shortages, we wouldn't do it with this committee amendment. Now, I would like to give tax relief almost of any kind, but as long as it applies on a fair basis, on a consistent basis, across the state. That's why I hope that we can defeat the committee amendment and move on to the green copy and...or at least to move on to another type of amendment to have a slower phase-in of the green copy, because that way we could afford it, we could eventually arrive at some policy that helps out the entire state. It would help out the military...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...retiree. It would help out the military retiree who is now an educator or working in the community in any kind of job, and then we can eliminate Nebraska from the list of five states who doesn't give any type of military retirement consideration whatsoever. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. On with discussion. Senator Cornett.

SENATOR CORNETT: Thank you, Mr. President and members of the Legislature. I just wanted to finish where I left off earlier in regards to Senator Engel's comments. When I was speaking about homegrown companies, when he said that we ought to offer a better wage, it's not the wage that attracts these people. The



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

wages are approximately the same throughout the country. It's the benefits that they receive from the state, and the amenities. I'm going to read a letter that I received from a company that is starting. We were recently disappointed when two highly recruited individuals declined offers from our company to work here in the Omaha area. Both relayed a similar concern that resulted in them choosing to leave Nebraska for another state--the impact of taxation on their military retirement. Both individuals were military officers of the grade of colonel, representing a high level of expertise and understanding of military operations. Both moved to states that do not pay military tax. Both are presently employed in the defense contracting business sector. To summarize, I am witness to the fact that discrimination, like taxation of military pay, does make a difference for the Nebraska-based businesses. We cannot expect to attract individuals who will make an employment decision based on their desire to relocate to warmer climates or coastal states. However, Nebraska can attract top-level military retirees by leveling the playing field with passage of this amendment. In response to Senator Smith, while I agree with him that offering a broader exemption for military would be more fair, it is not feasible at this time. He said that it does not impact his area of the state. This does not just impact Sarpy County. There are defense contractors in Cass County, Douglas County, McCook. We've been trying to compile a list of the defense contractors outside the metro area, which there are a number of, but not just the businesses themselves. The amount of revenue that these businesses bring into the state is taxable and benefit the state as a whole. I believe Senator Redfield has some figures that I gave her in regards to how much defense contractors bring into the state in taxable income. If I'm not mistaken, I believe it's \$400 million, approximately \$400 million for defense contractors, and \$239 million, approximately--I'm doing this from memory--for Air Force alone. That sounds like a lot of money, but Nebraska is 44th in the country on defense contractors and the amount of revenue that they bring into the state. We have the businesses. We have the ability to expand. We do not have the people to fill these positions. Thank you.

SENATOR CUDABACK: Thank you, Senator Cornett. Senator Mines,

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

followed by Senator Jensen.

SENATOR MINES: Thank you, Mr. President. I would yield my time to Senator Chambers.

SENATOR CUDABACK: Senator. Senator Chambers, almost five minutes.

SENATOR CHAMBERS: Mr. President, two things: I must speak a discouraging word; second, I cannot join the hallelujah chorus. I'm not going to talk about my attitude toward the Iraq War, the administration's benighted policy that has caused more than 1,600 young people to lose their lives for nothing, the fact that these military contractors have sent equipment over there that was not properly armored. I won't talk in detail about the fact that tourniquets that could save lives were not made available to the troops, body armor was not made available, a gun mount necessary to be on one of these vehicles had to be made by the father of one of the men in service because the government was not supplying it and these machine guns were so heavy that they could not be stabilized when they were to be fired. Defense contractors are not my favorite people. In Iraq, they're not contractors in the sense that is understood in this country. They are mercenaries, mercenaries for hire. Every time one of these bills comes up all I hear is, well, other state...they'll go to other states. Well, let them go. When these inflated defense contracts are obtained from the federal government, they can build in an amount to bribe these people, if they need to do so. I'm not in favor of this type of legislation, period. But if I were going to support an approach like this, I would want it to benefit not only the individuals or some defense contractor whose only motivation is profit. And the only reason these people who are going to be benefitted are working is for profit. They are not patriots. That's not why they're doing this. They get high salaries. There are people in this society, such as teachers, who if they were forgiven some of their tax liability would be benefitted for sure, but it would facilitate them doing the work that is very important to this society, if people respect teachers as they say. Nothing is going to redound to the benefit of this society by taking this select group of people who are deemed elitists and treating

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

them differently and better than everybody else. What difference does it make if they have some kind of security clearance? That's what spies get when they're going to betray the country. I see something in this committee amendment which I would like to ask the Chairman of the Revenue Committee a question about, if he will respond.

SENATOR CUDABACK: Senator Landis, would you respond?

SENATOR LANDIS: Yes.

SENATOR CHAMBERS: Senator Landis, there is a citation to a federal regulation, I guess, a C.F.R., 32 C.F.R. 155.1 through 155.6. That relates to qualification of these defense contractors, I guess. If Congress amended that during this session of Congress, that would be a change in what's being looked at and cited here. Is that correct?

SENATOR LANDIS: Yes.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: I would interpret that, as it exists at this time. And as that statute changed, Nebraska law would change as well. That's off the top of my head.

SENATOR CHAMBERS: But that would be an improper delegation of legislative authority, and constructions like that have been struck down by the Nebraska Supreme Court.

SENATOR LANDIS: We...that's true where we've done it. Well, as a matter of fact, let me just check the language, because I'm looking at a summary when I even look at that.

SENATOR CHAMBERS: Okay. And this isn't...this isn't a trick question to you, by the way.

SENATOR LANDIS: Right. Right. I'll tell you what it's meant to do, Senator Chambers. It's meant to identify, as narrow as we can, certain kind of defense contracts that we think will be in this field. We cannot use, by federal law we're told,

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

security clearance designation. Now, that's odd to me, but that...I've had legal representation tell me that we may not reference this to holders of security clearances, which was another way of trying to get to the same path. So, as a backup, we identified...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: We only had a minute. We've only been talking for a minute. Okay, he said our time is up.

SENATOR CUDABACK: That's a minute, a minute since you asked the question, Senator. Thank you. Senator Jensen, followed by Senator Stuhr.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. Senator Cornett, would you reply to a question, please?

SENATOR CUDABACK: Senator Cornett, would you respond to a question from Senator Jensen? Senator?

SENATOR JENSEN: Senator Cornett.

SENATOR CORNETT: Yes. Sorry.

SENATOR JENSEN: Yes. Could you just kind of lead me through the mechanics of an individual and how they would apply for this status?

SENATOR CUDABACK: Senator.

SENATOR CORNETT: Oh, sorry, I thought somebody was saying something. Yes, I can. These jobs are available at this time. They've been trying to recruit for them through job fairs and through recruiting at bases. What the person does or has to have is a security clearance to apply. The problem is with federal regulations we cannot say "security clearance," so what it boils down to is, for them to receive this exemption they have to be retired military, full-time employed in the state of Nebraska in an industry that is registered as a contractor with

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

the federal government.

SENATOR JENSEN: Okay. They apply for this exemption. I guess what I'm really interested in is how does the state handle this then, and do we have a tracking system to know what our expenditures are, how many people are going to be applying for this, and so that we can see how this is working at some point in time, saying that this is our base year and how do we go from here.

SENATOR CORNETT: I'm going to refer that question to Senator Landis,...

SENATOR JENSEN: Okay.

SENATOR CORNETT: ...if...George was working out the technical amendments of who they would register with.

SENATOR CUDABACK: Did you wish to ask Senator Landis, Senator Jensen?

SENATOR JENSEN: Yes, if Senator Landis would reply, please.

SENATOR CUDABACK: Senator Landis, are you available?

SENATOR JENSEN: Senator Landis, my question was kind of the mechanics of how an individual who would apply for a position be hired. How does the state...does he apply then for an exemption with the state when he files his income tax, and then do we have also the mechanics within the Revenue Department to track that and to determine from a baseline of, say, 2005, how many are applying, what the cost of this is, and then should at a point later on either we expand it or contract it?

SENATOR LANDIS: Right. Fair question. Story is this. You...this becomes a general part of our tax code. If you qualify to use this, you would be able to access a Nebraska income tax form and make the appropriate exemption. You'd send it in with your check. In the event you were pulled out for an audit, you would have to demonstrate that what you represented is true. If you couldn't represent that it was...if you

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

couldn't prove that it was true, just like another tax code, you might be responsible for some otherwise tax obligation that you thought you were exempt from. Our current policy is that our auditing function in the Department of Revenue is relatively strained,...

SENATOR JENSEN: Hm, understand.

SENATOR LANDIS: ...pushed to the limit. And, by the way, it's been pushed to the limit for the most part because of the drying up of some of the resources for tax incentive programs. Truth in advertising, that's so. However, we did make one adjustment. Last year we had the tax amnesty program.

SENATOR JENSEN: Yes.

SENATOR LANDIS: It raised \$6 million in unpaid taxes. A million of that went into the Department of Revenue to expand their auditing function, and so long as they continue to pay for themselves by discovering unpaid taxes, they stay in place. It should give us the auditing function necessary to keep this program up.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: The Department of Revenue keeps track of its various forms of data over time. If we wanted to know five years from now what's happened, they would be able to tell us.

SENATOR JENSEN: Great.

SENATOR LANDIS: We cannot break out individual taxpayers. We can lump sum tax data, bring it back to the Legislature for evaluation.

SENATOR JENSEN: Thank you. That helps a lot. I'll tell you, the military people--and certainly I'm more familiar with those that do come out of the Air Force institution or, not institution, facility at Offutt--all across the city, all across the state are being picked up because they're quality employees, first of all. I've also been to the Peterson Air Force Base out



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

in Colorado Springs and, yes, that environment out there is attractive. But I also know that Nebraska...

SENATOR CUDABACK: Time, Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator. On with discussion. Senator Stuhr, followed by Senator Brown.

SENATOR STUHR: Thank you, Mr. President and members of the body. I, too, will be supporting the committee amendment and the bill, and I thank Senator Cornett for bringing this bill forward. It won't be helping my area, but I do believe that it's an important economic development issue for our state. I believe that it will help to attract talented workers to fill some key positions that we're looking at. It will encourage highly skilled military retirees with critical security clearance and experience levels to move to or to stay in our state, and I do believe that that is important. Just a comment that--and we've been talking about some of the other states--5 states, including Nebraska, do fully tax military pensions, and we've talked about Nebraska--California, Connecticut, Rhode Island, and Vermont; whereas, 22 states I believe do not tax military pensions; 23 states only partially tax these pensions. I do believe that the net payoff will probably be very positive, and I think that's been stated before, that it will likely increase our overall tax revenues through additional taxation of salaries, sales tax, property tax, and certainly will encourage business growth. I do believe that's an important recruiting and retention incentive for trained and experienced military personnel. I do support the amendment and the bill, and I would give the rest of my time to Senator Cornett, if she would like to finish discussing some parts that she has not had a chance to do. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Cornett.

SENATOR CORNETT: Thank you, Senator Stuhr, for the time and your support. You touched on a topic that is very important to remember. This does not affect every county in the state

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

directly. It does affect them in regards to the revenue brought into the state. And, yes, I would like to support and offer a full exemption for the military, because I believe in supporting our military and our retirees, but this is not the right time, as was brought forth in the Revenue Committee. Mr. Smith is right that it would be more fair to offer something broader. But right now, this is an immediate need. Let's get this in place and show the state what benefits can be brought by offering the military an exemption. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Cornett and Senator Stuhr. Senator Brown, on the Revenue Committee amendments.

SENATOR BROWN: Mr. President, members, we have talked a lot about a lot of different aspects to this bill, but I think that the basic aspect is that it's a preservation of the economic impact that Offutt brings to the...to the state, and all of the surrounding industries that are a part of that, and that impact is a \$2 billion a year impact, but it is also the impact of having individuals who become acquainted with the good life of Nebraska and hopefully will stay here. And those individuals have been highly trained, are skilled individuals. And even though Senator Chambers and I might disagree with some things, part of what he said I felt was very apropos because he was...he was speaking about his concerns about the war and about the military in the abstract, but speaking pretty sensitively about the individuals who risk their lives for our country and for the issues, that whether we agree with them or disagree with them, these individuals are doing something in service. And anyway, it is this bill kind of walks a line between the needs of the contractors for skilled employees, and benefiting those employees so that they will stay here, so that they will continue to contribute to the economy of the state. And with that, I would yield the rest of my time to Senator Landis.

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: Thank you, Senator Brown. Senator Chambers had asked a question about the reference to federal code, and George Kilpatrick told me about a piece that I really wasn't aware of and I'm glad to know about. We changed from a property tax

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

based state to a sales and income tax based state during the Tiemann years in the sixties, and when we did that we had to pass a state constitutional amendment allowing us to use the state sales and income tax. As part of the constitution, when we did that, it said this: When an income tax is adopted by the Legislature, the Legislature may adopt an income tax law based upon the laws of the United States. Now, if we make reference to a law it's okay, but it usually means that it's frozen in time as the law was on the day that the state passed the act that made reference to it. That's not the case with references in our income tax code. Because of this one piece, we can adopt by reference a federal law even though the federal law might change. And here, in Anderson v. Tiemann, is the court case solution: The Legislature has authority to enact state income tax laws which incorporate future income tax laws of the United States. So when we make reference to C.F.S. blank, blank, blank in our income tax code, it is constitutionally permissible, although this is an exemption to the norm, that that is referenced to that bill as of today and as it changes in the future. Normally, we wouldn't be able to do that, but we can in this area, and that's what that provision and that's what that case stand for.

SENATOR CUDABACK: Thank you, Senator Landis. Further discussion? Senator Chambers, followed by Senator Smith.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I didn't get to hear what Senator Landis said, but he and I had talked about it, so I figure that he did explain how this reference could stand as it is and be all right. But it is subject to change by the Defense Department and they could up the qualifications that are necessary, and some of these companies that...or employers that are now qualified won't be qualified anymore. There will be an automatic change, and those people who currently are eligible for this benefit no longer will be. But if those who are pushing this bill want to leave it that way that's fine with me, because I don't like the bill. I don't like it at all. These are basically desk jockeys. You're not talking about having some person come back here with an arm missing or a leg missing and give them some kind of a break. I've seen too many stories, one even involved the young

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

black woman who was taken as a prisoner and shot up, and she was not made a heroine. And when she came back to this country, she couldn't even get adequate medical care from the government. So these desk jockeys and these elitists, everybody in here is sucking up to them and worried about them again. They can take care of themselves. First of all, they're getting a military pension. Then they are put in this special category, supposedly so much better above everybody else that they have to be treated with special consideration. This helps the defense contractors, the hustlers, and they can build into the amount of money they're going to get from the federal government whatever it takes, as I said earlier, to bribe these people. Look at how some of these contracts are written and watch how they can be changed. And some of these contractors have walked off somehow with millions of dollars that are not accounted for by anybody. So when you say a military contractor, you are including Jesse James with Mother Teresa, you're including Saint Thomas More with Mata Hari. I would like to ask Senator Cornett a question.

SENATOR CUDABACK: Senator Cornett, would you yield?

SENATOR CORNETT: Yes.

SENATOR CHAMBERS: Senator Cornett, what is the meaning, in line 5, of "security classified work?"

SENATOR CORNETT: "Security classified work" was the language that we had to use to fall within federal guidelines, rather than say security clearance. I gave Senator Landis my entire pamphlet on the federal regulations, if he would like to...

SENATOR CHAMBERS: So what kind of work is that? That's what I want to know. What is...what...is it like homeland security?

SENATOR CORNETT: It depends on what type of contractor. Since Offutt now has Space Command, it can be technology for space. It can be work with computers and programs.

SENATOR CHAMBERS: Okay.

SENATOR CORNETT: It can be for the 55th Air Wing. It just

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

depends on which contractor and which company or...

SENATOR CHAMBERS: Now, Senator Cornett, was it you or somebody else who suggested that if this is not done Nebraska may lose Offutt Air Force Base?

SENATOR CORNETT: What I said, it was brought up a couple of different times in different ways, is one of the things that they look at with BRAC, and I've got all the criteria on BRAC if you would like to look at that also, BRAC is what...base realignment and closing, they look at three main criteria: the condition of the housing, the encroachment of the cities around the base, and...

SENATOR CUDABACK: One minute.

SENATOR CORNETT: ...support industries.

SENATOR CHAMBERS: But here's what I want to know. You're saying that Rumsfeld and then this commission that has to look at what he recommended is going to say Nebraska did not pass this bill so shut down Offutt? Is that what...somebody made you believe that, that this is what those decisions are based on?

SENATOR CORNETT: No one said that they would shut down Offutt. Offutt is, obviously, like any other base, something that they would look at in regards to base closing. Our primary concern is with Space Command, which we received from Colorado Springs, and Colorado still has the defense contractor industry in place to support the space industry. Because we've been able to...unable to fill these jobs, they are deploying people back to Colorado Springs and...

SENATOR CHAMBERS: So what? What does that mean to Nebraska? They're not going to shut down Offutt.

SENATOR CORNETT: Revenue. It's people. It's people buying homes. It's their families working...

SENATOR CUDABACK: Time, Senator Chambers.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR CORNETT: ...in the state. It's their children.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator. Senator Smith, followed by Senator Landis.

SENATOR SMITH: Thank you, Mr. President, members. Senator Cornett, would you yield to a question?

SENATOR CUDABACK: Senator Cornett.

SENATOR CORNETT: Yes, Senator Smith.

SENATOR SMITH: Senator, I appreciate your efforts. As I've indicated before, it's not my intent to delay here, because we do have Select File. Would you entertain an amendment on Select File to slow down the phase-in so that everyone could benefit from across the state, so that...and it's basically the green copy but a little slower phase-in so that we can afford it up-front, and then end up over time with a policy that will benefit the entire state rather than just Sarpy County?

SENATOR CORNETT: Senator Smith, your question has put me in somewhat of a difficult position. Yes, obviously, I would support LB 478 in its original form, and I also looked in the beginning, when I realized that it was not going to be able to come out of committee, at doing something very similar to what you're suggesting to benefit the entire state and lower the fiscal note and spread it out over a period of years. If such an amendment was offered, I would have to sit down and speak with the members of the Revenue Committee, who I agreed with to send this amendment out. But that is what I was planning on doing in the future, next year, was doing exactly what you're suggesting.

SENATOR SMITH: And prioritizing it?

SENATOR CORNETT: Yes, sir.

SENATOR SMITH: And so I sense that you have an open mind to



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

that.

SENATOR CORNETT: Yes, very much so. This bill, besides affecting my district, is very important to me. I've put a lot of hours in on it. And while I don't agree 100 percent with everyone on the Revenue Committee, I look at this as a step, and maybe the first step that we can take towards helping the military and the state. But, yes, that is my ultimate goal, and I will be honest, that is to continue introducing this bill, as did Senator Hartnett.

SENATOR SMITH: Okay. And...

SENATOR CORNETT: This amendment, though, I agreed to because there is an immediate need for it, and I agreed to support the Revenue Committee's amendment.

SENATOR SMITH: Well, I saw the cartoon here...

SENATOR CORNETT: Yes.

SENATOR SMITH: ...about brain drain and the graduates flying out of all of Nebraska, actually, not just Sarpy County.  
(Laugh)

SENATOR CORNETT: It is out of all of Nebraska.

SENATOR SMITH: And so it's an issue across the state, and so that's why I'm a little resistant, shall we say, of the committee amendment being so narrowly focused and...I mean, you're getting a huge bang for your buck in Sarpy County. What do I tell the military retirees in the western end of the state who are 30 miles down the road from no state income tax whatsoever? That's what I offer the discussion, and so it's very difficult to explain to folks, you know, why the committee amendment was adopted, I mean, I can probably explain why, but in terms of the greater impact. And so that's why I, again, this is my third time to speak. I can't speak any more. I've refrained from filing amendments, so...not that others may not file amendments, I don't know. But again, I hope that you continue to work on this because I think we can do better things

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

across the state rather than just each of our home counties, if you care to respond.

SENATOR CORNETT: I would definitely agree with you. One of the senators came up to me and said, how can I support this bill when it does not affect any of the retired military in my area and they will be...they will be angry at me?

SENATOR CUDABACK: One minute.

SENATOR CORNETT: The same way that I'm going back to my community and my district and saying that this amendment is only going to affect a percentage. And I guarantee you I have more retired military in my district than most of the rest of you combined, and not all of them are happy with me, and I will tell you and everyone here the same thing I have told them, that I will continue to work on this bill during my years in the Legislature.

SENATOR SMITH: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith, and that was your third time, Senator. Senator Landis.

SENATOR LANDIS: In fact I'll waive off. And for those (inaudible), I think there are any number of us who are supportive, could get to the vote before we all dissipate for the evening. I think there are some people who continue to want to speak up. My guess is Senator Chambers wants to speak again. I'll just simply waive off this opportunity to talk.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Mines. Senator Mines waives off as well. Senator Chambers.

SENATOR CHAMBERS: Mr. President, if this amendment is adopted and the bill moves, I'm going to fight it on Select File. There are so many questions that have not been touched at all. But the approach, I think, is totally inappropriate. What is there about security clearance that creates such a distinction between this category of retirees and all others so that they can be singled out and treated in this way without violating the

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

requirement under Nebraska law of equal protection of the law? Those issues have not even been touched. I haven't heard...I'm going to steal some words from Senator Landis that he used earlier this morning. Those things have not been discussed by any of the people who support this bill. I can understand the Revenue Committee being in a magnanimous mood and wanting to help Senator Cornett get her first priority bill out here, but the bill is so significant in its ramifications that I cannot go along with it, and I think it is inappropriate to do something like this. If there are other people doing this exact same kind of work but they don't have a high security classification because their phase of it doesn't need it, they...you mean if they're doing this kind of work and they're retirees, they don't get this tax benefit? What does security clearance classified work have to do with anything in establishing a class of taxpayers who are going to be given tax breaks? Has nothing to do with anything. If they lose that security clearance then they no longer qualify for this benefit? Will they have to pay anything back? I think the committee just wanted to give Senator Cornett something, and I think, as she stated, anything that's a step is satisfactory. But as with other things that come out here, this now belongs to the Legislature, and I don't think it's appropriate. The last sentence says, "In order to receive the exclusion provided in this subsection, the taxpayer shall submit a certification that the employer has received authorization to perform classified work for the federal Department of Defense that is signed by the employer's facility security officer." That sentence should be constructed differently, and I know how to do that, but I'm not going to go into that right now. This is talking about the qualification of the employer to do this work. The employer is the one performing the security classified work, so the employer could be doing security classified work but maybe not all the work that the employees do fit into that category. We don't know that, and you don't know it from this language. And is there some way to establish that if a contractor performs security classified work, whatever that is, that every employee also has security clearance? That doesn't say it in here, and we'd been told that they can't make reference to that. It's very loosely drafted. It seems to say something, it has been discussed as though it says something, but there is nothing about what the

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

employee is doing or the status of the employee, other than that he or she works for an employer performing a certain type of work. So there are serious questions. They have not been answered. If this amendment will be adopted, as it is going to be,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...then I'm going to have to, before it comes up again, ransack this amendment and the bill. Because there are provisions in the existing law to which this amendment will be made a part, so it's going to be a fertile ground for me to make my attacks. And those who support this bill and have sung hosanna and hallelujah should read this language and see exactly what it's saying. You see that a person is receiving a military retirement benefit, so the person is a retired military person. That could apply to the employer. The employer could be the retired person.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you.

SENATOR CUDABACK: Senator Mines.

SENATOR MINES: Question.

SENATOR CUDABACK: The question has been called. Do I see five hands? Two, three, four, five. I do see five hands. The question before the body is, shall debate cease on the Revenue Committee amendments, AM0863? All in favor vote aye; those opposed, nay. Voting on ceasing debate, AM0863. Have you all voted who...Senator Mines, for what purpose do you rise?

SENATOR MINES: Mr. President, there are people napping in their offices. I'd like to call the house.

SENATOR CUDABACK: Been a request for a call of the house. All in favor vote aye; opposed, nay. Record please, Mr. Clerk.

CLERK: 15 ayes, 1 nay to place the house under call,

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

Mr. President.

SENATOR CUDABACK: Vote was successful. The house is under call. All unexcused senators please report to the Chamber. Unauthorized personnel please leave the floor. The house is under call. The house is under call. Senator Jensen, Senator Combs. Senator Louden, Senator Bourne. Senator Foley. Senator Kremer. Senator Janssen, would you check in, please? Thank you. Senator Stuhr, would you check in, please? Thank you. Senator McDonald, you as well. Thank you. Senator Stuhr. All members are present or accounted for. Senator Mines, are you accepting call-ins? Mr. Clerk, Senator Mines is accepting call-ins. Please accept.

CLERK: Senator Jensen voting yes. Senator Wehrbein voting yes. Senator Foley voting yes. Senator Kremer voting yes. Senator Kruse voting yes. Senator Chambers voting no. Senator Stuthman voting yes. Senator Thompson voting yes. Senator Connealy voting yes. Senator Johnson voting yes. Senator Engel voting yes. Senator Don Pederson voting yes. Senator Brashear voting...you have voted yes, Senator Brashear. Senator Brown voting yes. Senator Aguilar voting yes. Senator Beutler voting yes.

SENATOR CUDABACK: Record please, Mr. Clerk.

CLERK: 25 ayes, 2 nays to cease debate, Mr. President.

SENATOR CUDABACK: Motion was successful. Debate does cease. Senator Landis, you're recognized to close, as Chairman of the Revenue Committee, on AM0863.

SENATOR LANDIS: Thank you, Senator Cudaback, members of the Legislature. The bill that came to us originally was a broad-based exemption of military pension benefits, an idea we've seen many times before and had never reported out. The body of evidence that we had told us that there were a number of high-paying defense contractor jobs temporarily available in this area and for which there would be a continuing growth possible if, in fact, there was a labor pool that could meet those needs. Giving a tax incentive to the company itself

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

doesn't work because it's the creation of the labor pool that makes it work, and that means that in fact it has to be something by which being in Nebraska would make more sense than being in a state that either doesn't have an income tax or has a complete exemption for these kinds of workers. Senator Engel, by the way, said, well, why don't we just give the company a break and assist them with this? Well, the reason it doesn't work is because the employees, if you give it to the employees...I'm sorry, to the company so that they can give their employees more money, it makes it far more costly to do business here than anyplace else, because they have to come up with essentially a tax incentive to bring them even to where they would be someplace else. And that means that the company itself doesn't need to be here, doesn't want to be here, and you need to make it so that it is logical for the labor pool to be here so then the business itself could be here, which is why the bill is structured as it is, because, in fact, it's not for poor people. This isn't designed to be a social justice form of relief for people that are in need in the way that we traditionally think of. It's meant to be an economic development aimed at attracting certain kinds of companies by providing them with a very specialized labor pool. Understand, this tax exemption for pension benefits from a military pension start after you've made \$40,000 of income, and then it is on a two for one basis for income you make because you're in the workforce working. You get a pension break because you are employed, working in this particular kind of field. And if this doesn't exist, it will make a good deal of logic for both the worker and the business to be someplace else because it will be...it will be more beneficial to do the work someplace else than Nebraska. Understand that for the \$500,000 of tax exemption here, you have to generate about \$28 million of income. That is to say there will be \$28 million of income by people who are earning money at jobs, paying income tax on the \$28 million for which, by the way, we would give the \$500,000 of pension break that exists in this act. That's not a bad return of investment--\$500,000 of pension exemption; \$28 million of taxable income for workers and businesses then who choose to be here because it's attractive to be here as compared to other states where it would otherwise be more attractive to do this work, both for the worker and consequently for the business



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 48, 150, 478, 500  
LR 224

itself. I'd ask for the adoption of AM0863 from the Revenue Committee's amendment to LB 478. Thank you.

SENATOR CUDABACK: You heard the closing on Revenue Committee amendments, offered by Chairman of the committee, Chairman Landis. The question before the body is, shall AM0863 be adopted? All in favor vote aye; opposed vote nay. Voting on adoption of the Revenue Committee amendments. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 35 ayes, 6 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments have been adopted. I do raise the call. Mr. Clerk, items for the record, please.

CLERK: Mr. President, amendments to be printed: Senator Stuthman to LB 500; Senator Fischer, LB 150; Senator Landis, LB 48; Senator Bourne, LB 48; Senator Friend to LB 48. New resolution: Senator Howard offers LR 224; that will be laid over, Mr. President. (Legislative Journal pages 1635-1642.)

SENATOR CUDABACK: Thank you, Mr. Clerk.

CLERK: I have nothing further pending to LB 478 at this time, Mr. President.

SENATOR CUDABACK: Thank you. We're now back to discussion of the advancement of LB 478. Open for discussion. Senator Beutler, followed by Senator Chambers.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, first of all, I want to say thank you to Senator...Cornett, yeah, (laughter) for passing out the memo from the Research Office that had a lot of material in it with regard to the taxation of retirement income, some of which appears to be somewhat confusing. One thing that was of interest to me as you...she...they had included in that memo a chart which is interesting to look at, which has four different categories--federal military pensions, federal civil service pensions, state and local pensions, state and local government

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

pensions, and private pensions--four different categories. And if you scan down through the various states and across at all four categories, you'll find that generally speaking if you made an exemption in one category, you made a similar one in all four. And then reading on further as to why that may be the case, you come across language such as this in the Research Division's analysis of the law in this area: "If a state constitution guarantees equal protection and prohibits special legislation, courts might use a test that is more stringent than the rational basis test. Article III, Section 18, of the Nebraska Constitution guarantees to Nebraskans equal protection of the law. This means that the law must apply equally to everyone or, if some people are penalized or benefited by the law, there must be some rational basis for the exception." And then goes on to conclude, "Therefore, depending on the circumstances, discriminatory pension tax laws in Nebraska might be subject to constitutional challenges based on the intergovernmental tax immunity doctrine, principles of equal protection, and the prohibition of special legislation." The fact that all of these states seem to treat, by and large, all four categories equally, would seem to indicate to me that there is a danger if you treat any one of those four categories differently. So, in other words, absent this amendment, if you were...if you were exempting all of military pensions, the argument could be strongly made that you need to exempt all pensions. And so I wanted to...and I think, if I'm remembering right, that that's one of the reasons we never wanted to go here, because it tends to be something where you have to treat everything equally. But I wanted to ask Senator Landis, with the committee amendment you've not only cut down on the fiscal note but you've created a different kind of rationale for distinguishing a portion, not only of a...you've distinguished a particular category, military retirement, from the other three categories in this analysis in this document, but even within military categories you've distinguished on the basis of a presumed state need for incent...in giving incentives to fill certain positions in industry. I just wanted to ask whether there had been any...

SENATOR CUDABACK: One minute.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR BEUTLER: ...separate legal analysis of whether you can get away with this on a...under either the intergovernmental immunity doctrine or the equal protection doctrine or the special legislation doctrine. Because it just seems like either way you do it the whole thing is pitted with danger areas, in a constitutional sense, unless you simply treat all different categories of pensions the same across the board. And I would just invite your comment on that.

SENATOR LANDIS: This is our best attempt to create, I think, a rational distinction which I think will survive in this case, because it doesn't...it's not by one kind of government to another...

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Time.

SENATOR LANDIS: ...kind of government.

SPEAKER BRASHEAR: Thank you, Senator Beutler. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, here is something that I want to call to everybody's attention. There is nothing in this language that says the taxpayer is performing security classified work. The taxpayer doesn't have to have any kind of security clearance at all. All the taxpayer has to do is perform...is be employed by the employer who performs this work. So if the employer is going to construct a facility or renovate a facility, this doesn't say the employer is a member of the United States military. This is a person hired by the government. This person pays an amount in wages and salaries, which means a worker or somebody who is not given an hourly wage. This could apply to a consultant to this employer. The language says an employer performing security classified work, not the employee. In the last sentence, when you're talking about the certification that the taxpayer provides, the certification is that the employer has received authorization to perform classified work, not that the taxpayer is performing classified work. So where do you all get off

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

saying that these individuals are highly trained people with a high security clearance when the language doesn't say that? This is any person working for an employer, and it implicates even to a great extent what Senator Beutler talked about and what I touched on briefly. These are not people classified on the basis of any security clearance, but even if they were, I don't think that's a valid basis for giving somebody a tax break. Look at the work they're doing. You don't have any idea from this what work is being done. Let's say you have a groundskeeper who is given a contract by the contractor to take care of the grounds, and more than \$40,000 is made, and that groundskeeper is a retired military person. That groundskeeper qualifies under this and is not doing anything that requires a security clearance, a classified status. Look at the language. All of you all singing hosanna and hallelujah and thanking Senator Cornett for bringing the bill and the Revenue Committee for amending it, nothing in here says anything about the employee except that he or she can get this break by earning more than \$40,000, not through being classified or having a security clearance. That's where the disconnect came when I looked at this and heard what everybody was singing, like the Mormon Tabernacle Choir in unison, mentioning that these people are being sought after by other states, which is the mantra around here now, other states. If somebody can show me in this language where the employee is required to have a security clearance, I will eat this piece of paper and I will not drink water. I'll take however long it takes for me to chew it up and swallow it. There's nothing in here that says that. It's all about...

SPEAKER BRASHEAR: One minute.

SENATOR CHAMBERS: ...the employer. Could the employer qualify for this? Well, not really, unless the employer happens to be the military and the military pays some wages to this employer who, in turn, is going to pay wages to somebody else. The employer can get this money too, perhaps, under this language. It doesn't say that it is...it cannot be a chain of employers who employ others, who in turn employ others. This is not a good bill. This is not drafted well. The idea is not a valid one. But I'm telling you all, because you are so eager to pass

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

it on and put off till tomorrow...

SPEAKER BRASHEAR: Time. Senator Landis. Pardon me, Senator Landis. Mr. Clerk, I'm sorry.

CLERK: Mr. President, Senator Chambers would move to amend the bill, FA280. (Legislative Journal page 1643.)

SPEAKER BRASHEAR: Senator Chambers, you're recognized to open.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I wasn't aware, I guess I should have figured it out, that we would necessarily get to this bill this evening, so I didn't do a lot of careful analysis of it. But indulging in my penchant for reading the language, I saw something that reached out and slapped me and said, Ernie, if you let that language stand as it is you will get no rest tonight. There are many miles you must travel before you sleep, but I don't care how many miles you travel; if you don't correct that language or attempt to, you're not going to sleep tonight. And that voice inside my head, that doesn't tell me to go kill people, it's a very harsh taskmaster. I must please that one who resides inside my head. So here's what my amendment would do. That little digression will give you a chance to look at the gadget. I'm dealing with the last sentence which begins in line 8. This is the way it currently reads...and we have time. As Senator Jensen or somebody said, this is my bonding time with my brothers and sisters, my friends, enemies, and neutrals. I don't know if anybody has ever watched how "Wonder Woman" fans. She could have come from Elizabethan England, just pauses, looks up, very sedately, and then calmly disturbs the air and cools herself. Anyway, let me go back to this now. Here's how it reads: "In order to receive the exclusion provided in this subsection, the taxpayer shall submit a certification that the employer has received authorization to perform classified work for the federal Department of Defense that is signed by the employer's facility security officer." I would do this. After "certification" I would put the words, "signed by the employer's facility security officer," and then I would strike out of line 12 the words...lines 12 and 13, "that is signed by the employer's facility security officer." And here's how the sentence would

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

read: In order to receive the exclusion provided in this subsection, the taxpayer shall submit a certification signed by the employer's facility security officer that the employer has received authorization to perform the classified work, and so forth. I think language in statute should be put close to that language which it is modifying, explaining, or clarifying. You don't have to accept this change. It's just one that I had to offer. But it gives me an opportunity to talk a little bit more about what has become the bill through the adoption of the committee amendment. I'm going to read the entire language to see if anything in here is about the employee other than getting the tax break: The amount of income received as a military retirement benefit resulting from service in the armed forces of the United States equal to one-half the amount of income earned as wages and salaries paid in Nebraska by an employer performing security classified work for the federal Department of Defense and qualified under 32 C.F.R. 155.1 through 155.6, to the extent that such wages and salaries exceed \$40,000 during the tax year. In order to receive the exclusion provided in this subsection, the taxpayer shall submit a certification that the employer has received authorization to perform classified work. Why would this not apply to a groundskeeper who, over the course of the year, earned more than \$40,000, or a consultant, or even a partner? They might say, well, the partner is not employed. So let's say a subcontractor. The subcontractor doesn't have to do the classified work, just the one employing the subcontractor. Had you all thought about that? Has the Revenue Committee, Senator Connealy, done it to us again? Huh? That's what I'm wondering. And you all have said this is a great piece of work, didn't you? I heard you. I don't know if Senator Mines said it or not. He's gone to snooze in his office now, but if he were here I would ask him a question. I don't see anybody up here who was praising the bill. Did...I'd like to ask Senator Synowiecki a question.

SPEAKER BRASHEAR: Senator Synowiecki, will you yield?

SENATOR SYNOWIECKI: Yes, I would, Mr. Speaker.

SENATOR CHAMBERS: Senator Synowiecki, excuse me, Senator Synowiecki, I've been listening to other people too long. I'm



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

going to stop doing that. Had you had any comment to make on this amendment?

SENATOR SYNOWIECKI: No, I have not made any comments and I did not vote on that first vote on the amendment.

SENATOR CHAMBERS: Okay. Thank you. I would like to ask Senator Connealy a question.

SPEAKER BRASHEAR: Senator Connealy, will you yield?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Senator Connealy, you're a member of the Revenue Committee. Is that correct?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: And you voted for this amendment to send it out to the floor?

SENATOR CONNEALY: Yes, I did.

SENATOR CHAMBERS: And you read it, I presume.

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Are you aware that there is nothing in here about the taxpayer having any security clearance?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Then why were...why was everybody talking about that's the pool that we're talking about being covered by this amendment?

SENATOR CONNEALY: It was...the qualifier was the company had to have its security clearance and that they qualified, and they would hire employees that fit that.

SENATOR CHAMBERS: Well, the employees don't all have to have

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

security clearance to work for this company, do they?

SENATOR CONNEALY: They have to be military retirees that make over \$40,000 a year.

SENATOR CHAMBERS: But they don't have to have a security clearance, do they, under the language of this amendment?

SENATOR CONNEALY: No.

SENATOR CHAMBERS: So why was everybody talking about these highly qualified people with security clearance that are wanted in other states?

SENATOR CONNEALY: Because they tend to hire those. Those are the people that are in short supply.

SENATOR CHAMBERS: But those are not the ones covered by this amendment, are they?

SENATOR CONNEALY: Yes, they are, because they are covered by it, yes. They aren't exclusively covered by it, but they are covered.

SENATOR CHAMBERS: Thank you. They're not exclusively...

SENATOR CONNEALY: But...but the understanding was that groundskeepers most likely had security clearance, too. These are companies that are highly classified and very security conscious companies.

SENATOR CHAMBERS: You are talking all...would you stay on your feet, if you don't mind, Senator Connealy? I'm not through questioning you yet.

SPEAKER BRASHEAR: Senator Connealy, will you continue to yield?

SENATOR CONNEALY: Yes.

SENATOR CHAMBERS: Senator Connealy, where do you get the idea that a groundskeeper would have to have a high security

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

clearance?

SENATOR CONNEALY: Everyone employed in the company, was testimony and discussion, that some of these companies have everyone that they hire have to have these kind of clearances.

SENATOR CHAMBERS: Is that what's in this federal regulation?

SENATOR CONNEALY: The federal regulation has to do with the kind of work that they do.

SENATOR CHAMBERS: So what is there in this language that says that the employee has this high security clearance?

SENATOR CONNEALY: It doesn't.

SENATOR CHAMBERS: So it would cover people who don't have a high security clearance, wouldn't it?

SENATOR CONNEALY: Yes, that's what I said.

SENATOR CHAMBERS: Okay. And some of these who don't have the high security clearance would not be those that are being sought by other states. Is that true?

SENATOR CONNEALY: The way the system works, most likely they would be employed in the same kind of field in other states. So I don't think I'd answer that in the affirmative.

SENATOR CHAMBERS: (Laugh) Thank you, Senator Yogi Berra. Members of the Legislature...thank you, Senator Connealy. That's all I will ask you. He reminds me of something Yogi probably would say--I did not say everything that I said...they accused me of having said. But anyway, there is nothing in this language...

SPEAKER BRASHEAR: One minute.

SENATOR CHAMBERS: ...that says what Senator Connealy or anybody else has said. We're asked...being asked to operate on presumptions and assumptions, and the constitutional issues

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

raised by Senator Beutler have not been addressed at all, and certainly not in this language. There is not a valid classification in this language which in my mind satisfies Nebraska's requirement of equal protection of the law. When people are similarly situated, that doesn't mean that all of them are doing a certain thing but some people are required to wear suits and others are not; therefore, those who wear suits get a tax break and those who don't wear the suit are not eligible for the tax break. This is not a good bill, but what my amendment does is what I mentioned. You can take it or leave it. Thank you, Mr. President.

SPEAKER BRASHEAR: Thank you, Senator Chambers. Senator Landis, to the amendment.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. In fact, I think the amendment is a different way of seeing the grammar, and there's...it's as...certainly as much as an improvement as anything else. It's not intended to be harmful to the bill, and could be adopted. And in fact, we would...the language would be as clear or clearer with the Chambers amendment than without. Although it doesn't have to be done, it certainly could be done. Senator Chambers' line of questions establish an assumption that we didn't make, so could then attack that assumption. By the way, here's, I think, what a fair characterization of the status is. The subcontractor would not be covered, and the reason is they're not an employee. Remember that we're talking about an employee and an employer who have salaries and wages that they share. The groundskeeper is. So I think that's the point that Senator Chambers wanted to make: Look, what about the groundskeeper? And a groundskeeper that didn't have a security clearance would also be covered, which is, I think, a point that he was going going after. The consultant? No. Why? Because they're not an employee. That's not an employment contract, that's an independent contractor status, and it's not covered by salaries and wages. That's a different status. However, the groundskeeper is on target, and I think that's where Senator Chambers wanted to go anyway. Now his argument was, wait a second. Isn't there a guarantee that they have to have a security clearance? The answer is no, there isn't. Senator Cunningham is right. One of the reasons we

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

can't do that is the representation that we received, and this was received secondhand, was that we could not make direct access to federal security clearance as a distinguishing characteristic by federal law. Now, we did not do the legislation...we did not do the legal analysis of that. We accepted the legal analysis of defense contractors who said, in fact, I know what you want to get to, but you can't get there because federal law doesn't let you go there. So Senator Chambers is right. There is nothing in this law that says it...that the employee only gets this if they have security clearance, but by the way, nobody ever said that on the floor. So this is not a revelation. In fact, it was clearly stated at the time this was described on the floor at the time. However, as close as we can get is to make reference to a narrow range of security-based defense contractors. If you happen to work for one of them, if you happen to be a military retired person with a pension, if you happen to make more than \$40,000, then your military pension starts getting a tax break on a two-to-one basis for the income that you make more than \$40,000. And if there's a groundskeeper that does not have a security clearance that is working for one of these defense contractors and he's making \$60,000, that between \$40,000 and \$60,000, he's getting on a two-for-one basis a tax exemption for the military pension he has for a full-time retired. That is a fuller description but that is simply consistent with the description that this body has been given at every stage of our discussion so far. However, the groundskeeper does exacerbate exactly, I think, the point that Senator Chambers was driving at, and that is, it is not tied to security clearances, but then, you were told that. And it doesn't mean that you are a security clearance person doing this work itself, but that you are an employee of this kind of company, because it's not aimed at the people so much as it is aimed at the company, to create a body or pool of people able to do, not just the groundskeeping at \$40,000-plus, but the kind of work for which they would pay \$60,000, \$80,000 or \$100,000.

SENATOR CUDABACK SPEAKING

SENATOR CUDABACK: One minute.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR LANDIS: Those kinds of companies who are paying that kind of money we want to have in Nebraska. And where they can find those employees, because the employees want to go to another state where they are tax-exempt--and by the way, in that table you saw that there were plenty of states like that--they can go there. In Nebraska, what this one says is, you know what? You can earn your way to total exemption. All you got to do is earn, like, \$80,000 a year and be paid for by a company who is located here, and then in case we'll give you the exemption. So the character of the...the factual characterization, which has not been in dispute and is not a revelation but is more graphically portrayed, I think is accurate, and that is, a groundskeeper employee who does not have a security clearance, but who works for one of these kinds of people, who is a retired military personnel, for money over \$40,000 will get a two-for-one tax exemption. And why do we do that? Because that's as close as we can get to getting to the defense contractors we most want to have come here, stay here, employ here, create high-paying jobs.

SENATOR CUDABACK: Time, Senator Landis.

SENATOR LANDIS: And that's the way to do it. This is as close as we can do.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Cornett.

SENATOR CORNETT: Thank you, Mr. Chairman and members of the body. First, I want to rise in support of the Chambers amendment. I believe that it makes the language more clear, and I want to thank Senator Chambers. I know that he does not agree with the principles of this bill, but he's always shown a dedication in not allowing legislation to pass where wording isn't clear or could do more damage, even if he doesn't agree with it. I also have the definitions of security clearances and facility clearances that I'd be happy to show him off of the floor, and that way he could get an idea what we're talking about in regards to clearances for the facilities and clearances for the individuals and what the requirements for that are. Thank you.



TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR CUDABACK: Thank you, Senator Cornett. On with discussion of the Chambers amendment, FA280, to LB 478. Senator Chambers, followed by Senator Beutler.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Cornett doesn't have to tell me anything about any security clearance because Senator Landis said that's never what this was about, that is was made clear. He said that you didn't have to have the security clearance, but that is the distinct impression that I got, and people who discussed it talked about these people with the security clearance were the ones being sought, and this bill is designed to help those people be recruited and retained by these companies. Now maybe I didn't hear something, but I can get a copy of the transcript, and I will see what actually was said. And if that was not said, then I'll acknowledge I should have listened more carefully. But that was the impression that I got. But since security clearance of the employee has nothing to do with anything, I don't need to see anything, Senator Cornett, because all I need to know is that the company is doing some kind of security, classified work. And you have it on hearsay, from what I can gather. Some contractor said, well, yeah, that's the way it ought to be, but you...we can't establish that for a fact because we can't talk about that. And the body is to accept that and create a bogus classification on something that cannot even be established. We are not dealing with classified information. We are not an agency of the federal government, maintaining military secrets. And all of this stuff that's being talked about, in fact, is the responsibility of the federal government, not the state. Everything in this bill, as it exists now with the amendment, is the responsibility of the federal government. The employer being discussed is hired by the federal government, meets qualifications set by the federal government. And if the contractor cannot provide enough workers to do the job, that contractor is not going to get the contract. So we are not even talking about an employer. You're talking about a potential employer that you're trying to help. But if you're talking about an employer, that person already has the employees working. And these employees I don't believe are going to say, well, I'm going to quit. You might have people who won't take the job in the first instance, but we're talking

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

about an employer who has employees. And Senator Beutler has some interesting matters that he will raise in addition. This is not a simple area and this is not simply a step toward exempting all of the pensions received by former military people, and Nebraska should not do that unless they exempt from taxation the pensions of everybody of every description. I'd like to ask the Chairman of Revenue Committee a question, because I'm not sure about this and I don't want to go straying off. Maybe I should ask the Retirement Committee, but I can ask Senator Landis. Are...

SENATOR CUDABACK: Senator Landis.

SENATOR CHAMBERS: Oh...

SENATOR CUDABACK: I'm sorry, Senator Chambers.

SENATOR CHAMBERS: That okay.

SENATOR CUDABACK: Senator Landis, would you yield to a...

SENATOR LANDIS: Uh-huh.

SENATOR CHAMBERS: Are any pensions taxed in this state other than military pensions?

SENATOR LANDIS: All pensions are taxed in this state.

SENATOR CHAMBERS: Okay. Then I can proceed. For my purposes, that answer is satisfactory. Why not exempt all of the pensions which anybody receives? Why not do that? The people who are getting their pensions work just as hard. And I heard when I was listening to the debate earlier that...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...the question had been made with reference to firefighters, police officers, and others. But that's not even given consideration. This is for one district in one county, and that's all, one discrete group which cannot, in my mind, be distinguished from others sufficiently to meet

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

constitutional muster to allow them to be treated in this way. They don't have to have a security clearance. And if people speculate, as Senator Connealy did, and others say, well, maybe this and maybe that. You go by what the language of the law is, and a person does not have to have a security clearance. That's it, as far as I'm concerned. But you want to run with it? I'll let you run with it off General File, but it's not going to get a free ride on Select File. And maybe I should take all the time because the Speaker may not give us enough time on Select,...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...but I'll find a way. Thank you, Mr. President.

SENATOR CUDABACK: Thank you. Senator Beutler, followed by Senator Landis.

SENATOR BEUTLER: Senator Landis, I wanted to ask you about another possible variation here that seems somewhat troublesome to me. But when I was in the United States Army, I was part of an accounting office in Thailand, and we had a very high-ranked civilian accounting person who would be getting a civilian, federal civilian, retirement situation. He was classified. It seems to me that if the rational basis of this amendment is the work and the jobs that need to be filled, and if this case would hold at the federal level as opposed to being a state level case, a case that says you can't distinguish between military and civilian pensions at the federal level, is it...would it be fair to say that there are civilian people with classifications that could also be hired by the Department of Defense to do this work? And if these people had civil federal pensions, doesn't that present another possible problem? And I guess, going all the way through it, if you're going to create this kind of rational basis, would it make sense to include civil federal retirees as part of the class that could benefit?

SENATOR LANDIS: I'll answer that if I've been given the time.

SENATOR CUDABACK: Senator Landis.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR LANDIS: The...if you were out to do this as clearly as you could and try to get at it, you would use the security clearance of the employee as the distinguishing characteristic. But we can't do that, we're told. Taking it secondhand, that's true, and in fact that's a source that maybe we need to check on further. But if that's true that we can't make that the distinguishing characteristic, then we have to find another way of trying to generally describe, because you can't use the parameters that you're really aiming at by name. Remember that on a rational basis, all we have to do is have to have a rational reason. We're not up talking about strict scrutiny, we're not talking about a higher standard. All we have to do is have a basis for which there's a rational classification, a reasonableness and a reasonable purpose in mind, a reasonable state purpose. And I think a reasonable state purpose, economic development would normally meet that standard, I think. So I think we meet the reasonable standard test. And yes, what you posit is a situation which, if we could, would probably be the more accurate way of getting it, and it would let both, some federal and some civil. However, since what I think the net effect of this will be is to rationally target the kind of folks who are likely to have those skills and conditions that the employer itself wants, and then it's rational for us to want to encourage that employer to be here, my guess is that you've got a rational...you have a scheme that would meet a rational basis test. Does it have to include civil employees? The answer is no. And the reason is, you're not talking about an equal protection level like strict scrutiny where you have to get everybody inside the class and exclude those which are irrelevant. All you have to do is you have to bunch up for a reasonable purpose a...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...classification that you have a governmental purpose in achieving. And that's what I think we have here.

SENATOR BEUTLER: Okay. And that rational basis test, is that the test that's applied under the federal statute, apparently? Is there a federal statute that requires the equal treatment,

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

for example, of different kinds of federal pensions?

SENATOR LANDIS: In fact, one of the...the basis there was the intragovernmental immunity argument, and which is a different test. And there it's saying all federal pensions are treated different than all state pensions. It's comparing the two levels of government. And you don't have that situation here because not all military pensions are being treated alike, not all federal pensions are being treated alike, nor all, you know, states...in other words, we haven't used federal government. And the distinguishing characteristic is not the federal government versus state government, and it's not even military pensions versus other pensions. It is that you are a taxpayer working for this kind of an employer...

SENATOR CUDABACK: Time, Senator.

SENATOR LANDIS: ...and you happen to have...be a retired military. It doesn't...

SENATOR CUDABACK: You may continue, Senator Landis. It's your time now.

SENATOR LANDIS: Thank you. It doesn't implicate the comparative terms of the intragovernmental immunity test that are otherwise there, where you're comparing all federal...all (inaudible) federal pensions versus other kinds of pensions. It builds from the employee up. Now if the argument is, can there be an argument, the answer is yes, but that's true about everything. Might there be a challenge? Absolutely. Might there be a question? Absolutely, but that's true of each and every bill we ever pass. But there is an arguable rational basis, I think, for the construct of what we've done that meets a governmental purpose, and the governmental purpose of economic development is sufficient and for which you then have to have a rational reason for what you do. You do not have to have perfect reason or to have achieved it perfectly either. You don't have to have eradicated all of a wrong or achieved all of a good to have achieved a rational basis under the equal protection at that standard of interpretation.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR CUDABACK: Senator Landis, are you giving some of your time to Senator Beutler?

SENATOR LANDIS: Well, I...well, let me do it this way. Let me ask Senator Beutler if he wants to ask me a question. Will that work?

SENATOR CUDABACK: Senator Beutler.

SENATOR LANDIS: And when he's done asking the question, the time comes back to me.

SENATOR BEUTLER: Yes, I would ask you a question. What would you say is the rational basis for distinguishing a military, a federal military retiree from a federal civilian retiree, with respect to the fulfillment of your governmental purpose in this instance?

SENATOR LANDIS: Yeah. Because I think there will be a far higher number of military retirees that have a security clearance than there will be of all federal government employees. If you were to compare those two classifications, there'll be a demonstrable difference between them, and there will be a much higher number of military retirees who have a clearance.

SENATOR BEUTLER: And you think the fact that a higher number in one category justifies a different treatment of a lower number in another category?

SENATOR LANDIS: Yeah, that's right.

SENATOR BEUTLER: Okay. Thank you.

SENATOR CUDABACK: Senator Landis, have you completed?

SENATOR LANDIS: I have been handed something on...but I haven't a chance to look at it so, yes, I'll just waive the rest of my time. Thank you.

SENATOR CUDABACK: Thank you. Senator Cornett, followed by



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

Senator Beutler.

SENATOR CORNETT: Thank you, Mr. Chairman. Actually, I turned my light on to correct Senator Landis on something he had said when he said that all pensions in the state of Nebraska were taxed. Disability pensions for police and fire are not taxed, and I do not know what the status of retirement for disabled military is in the state, but there is the exemption for disability retirements.

SENATOR CUDABACK: Senator Landis, are you...

SENATOR CORNETT: Senator Landis, will you yield to a question?

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: Absolutely. (Laugh)

SENATOR CORNETT: I kind of sensed you wanted something.

SENATOR LANDIS: Give me a moment. By the way, I think Senator Stuhr saw me making this gesture over here to Senator Chambers after I answered the question because I wanted to amend...to add to it. Nebraska law does not create the exemption. Nebraska law treats all pensions alike. However, there is in the federal code exemptions which carry through by our use of the federal adjusted gross income. So while police pensions don't, injured police pensions do, but not by any Nebraska law. We treat all pensions alike. However, if you've achieved it at the federal level, it has a flow-through effect by our use of adjusted gross income. And it's why I was raising my hand after I had answered the question, because I had given the answer, does the state do it differently, and the answer is no. But the answer is correct; they do get treated differently, and that's because we follow through on some federal exemption statutes. So that is the more accurate answer to Senator Chambers' question.

SENATOR CORNETT: Thank you. I'll yield my time to...Senator Landis, were you...had your chance to look at that information yet? I'll yield my time to Senator Chambers.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR CUDABACK: Senator Chambers, about 2, 50.

SENATOR CHAMBERS: Thank you, Senator Cornett. Thank you, Mr. President. And Senator Landis, what I had stated was for my purposes. You had given me a sufficient answer because my...the follow-up question was, why not exempt all pensions that currently are taxed? That's what I was getting at, so the answer was sufficient. Members of the Legislature, there are so many problems with this bill and with Senator Landis' understanding of the equal protection clause of the Nebraska Constitution. Who can challenge this? Any federal recipient of a pension. There's no basis, under the Nebraska Constitution, to allow this kind of differentiation between federal pensioners, in my opinion. And equal protection is a matter which the court does scrutinize carefully. It is not one of those casual *comme ci, comme ca* kind of things where, as Senator Landis put it, you don't have to get rid of all the evil or provide all the good. We're not even talking about that. You have to show a substantive distinction that justifies classifying one group of people who apparently are similarly situated to another group so that you can treat them differently. And a court is not going to just say, well, these people happen to work for this kind of employer so they get the tax break. But other military pensioners who don't work for that employer can't get the tax break. If you say, well, we're looking...

SENATOR CHAMBERS: One minute.

SENATOR CHAMBERS: ...at the work performed by the employer, you're not really looking at the work, you're looking at the status of the employer. And I don't know whether the status of the employer is a sufficient basis to give a tax break to the employee. There's no relationship between the employee and the status of the employer. So that would not, in my mind, in my opinion, provide a satisfactory classification basis to give these people a tax break that is not given to others. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion about the Chambers amendment, FA280, Senator Friend.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

Is Senator Friend on the floor? Yes, he is. Sorry. Senator Friend waives his right. Senator Beutler.

SENATOR BEUTLER: Senator Landis, I was confused by an earlier discussion you had with Senator Chambers, and I'm fearful I missed Senator Chambers' point altogether. But do you have to have a classification in order to get the tax exemption in this case? Do you have to have a security clearance? Do you have to be authorized to perform classified work in order to get this exemption? Does the employee have to be so authorized? No. Okay. Okay, so any military retiree who goes to work for the Department of Defense...any military employee who goes to work for the Department of Defense is capable of receiving this exemption? Is that right? It has to be for the Department of Defense?

SENATOR LANDIS: (Microphone malfunction)...contractor, a defense contractor, but...

SENATOR BEUTLER: For any contractor.

SENATOR LANDIS: Contractors that meet the definition that you'll find in the amendment.

SENATOR BEUTLER: I'm sorry?

SENATOR LANDIS: A defense contractor as referenced in the amendment.

SENATOR BEUTLER: A defense contractor.

SENATOR LANDIS: That's right, but not for the Department of Defense. They're defense contractors, so they're private companies who work with the Department of Defense.

SENATOR BEUTLER: Okay.

SENATOR LANDIS: By the way, the large majority of the work is in the area of software and computers and information technology.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR BEUTLER: Okay. Senator Cornett, if I could ask you just one question.

SENATOR CUDABACK: Senator Cornett.

SENATOR CORNETT: Yes, Senator Beutler.

SENATOR BEUTLER: If it were helpful, for purposes of further avoiding equal protection arguments, is there...and since there's such a small number apparently, is there any reason not to include civilian retirees, federal or civilian retirees, as beneficiaries of this bill?

SENATOR CORNETT: Do you mean DOD retirees?

SENATOR BEUTLER: Pardon me? They might be DOD, they might be other agencies of government, but...

SENATOR CORNETT: Since it's such a limited...

SENATOR BEUTLER: ...probably most of them would be DOD.

SENATOR CORNETT: I was going to say, mostly DOD. It's DOD employees and military employees that these companies hire.

SENATOR BEUTLER: I'm sorry?

SENATOR CORNETT: I said it's DOD employees and military contractors...or I mean military retirees that these companies hire.

SENATOR BEUTLER: So you intend to include DOD civilian employees?

SENATOR CORNETT: No, that's was not the original intent. Since it is such a limited number, I would not have...I personally would not have any objections to that.

SENATOR BEUTLER: Okay. Thank you. I appreciate the information from both of you.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

SENATOR CUDABACK: Are you through, Senator Beutler? I assume you are. There are no further lights on. Senator Chambers, you're recognized to close on FA280.

SENATOR CHAMBERS: Thank you, Mr. President. The amendment is straightforward and simple. It has been agreed to so I need not comment further on that. I don't want to try to make this thing better because it's bad policy and I don't think it can withstand a challenge in court. It wouldn't necessarily have to go to the Nebraska Supreme Court or to a Nebraska court. It might could be challenged in federal court because you're dealing with federal employees. You're dealing with people who receive federal pensions and they're being given a special status, not because of the work they're doing, but because of the status of the employer. So if Senator Bourne has an operation that kills chickens, and I have an operation that kills sheep, Senator Bourne's employees get a tax break. That doesn't make sense. Certainly the employees are doing different things, but the employer is not in charity work. They employer is not exempt from taxes. You're going to say that because this employer does a certain kind of work, any employee who makes a certain amount of money gets a tax break. That's not economic development. Economic development does not consist in giving tax breaks to people who are hired not because of anything the state has done. The state doesn't create this program. The employer does not work for the state. How then is what these employees do and the salary they receive going to be considered economic development when, in the sense Senator Landis wants us to accept it, economic development is a term of art. It doesn't mean anything that happens to have an economic tinge to it, or that has an impact on the economy. This is not an economic development bill. That language is used so loosely here that people have gotten the idea that courts are going to be as loosey-goosey when they review something like this. They are not going to deal with this in the way it's been dealt with on the floor. In looking at equal protection of the law, well, one...what one does is different from what another one does, so that's a classification which justifies treating one differently when it comes to taxation than the other. I don't think that will stand. And distinguishing between and among these pensioners I don't think is going to stand. No basis has been

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

provided. That's what happens when a committee decides to do somebody a favor and does not want to do the analytical work that's necessary. I'm the one who started emphasizing that this is based on what the employer does, despite what Senator Landis says. It's the employer that is the focal point, the employer. Employee is not mentioned--employer. The taxpayer, we know, is a pensioner. We know the taxpayer is being paid either a salary or a wage by the employer. And the employer is the basis for the qualification because of the work that the employer is hired by the federal government to do. So if you work for somebody who does a certain kind of work, you get a tax break. That doesn't even connect up. There is no logical relationship there at all. In the law they use the term nexus. There is no nexus here which would justify an employee in getting a tax break simply because that employee works for an employer hired to do a certain work by the government. I'd like to ask Senator Cornett a question, if she would yield.

SENATOR CUDABACK: Senator Cornett, would you yield?

SENATOR CORNETT: Yes.

SENATOR CHAMBERS: Senator Cornett, what is being exempted from taxation here, the pension or the salary?

SENATOR CORNETT: The pension.

SENATOR CHAMBERS: Is a federal pension taxed by the federal government? Is a military pension...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...taxed by the federal government?

SENATOR CORNETT: Yes, I believe so.

SENATOR CHAMBERS: Well, why then couldn't somebody challenge in federal court a benefit given to one federal pensioner but not to another, pursuant to a state law, and that person could say, I'm being denied a benefit and I have the same basic status? They could challenge this probably in federal or state court, in



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

my opinion.

SENATOR CORNETT: It has been challenged in federal court. I've got some of the court rulings in regards to why DOD employees are not included in some states but military are.

SENATOR CHAMBERS: No, I'm talking about military employees where some military employees are given a break and other military pensioners are not. They're both pensioners from the military, and some are given the tax break under state law and others are not. And you say that in federal court, the courts have upheld that at the federal level?

SENATOR CORNETT: I thought you were referring to state courts. I'm sorry, sir. I don't know. I'll have to look into that.

SENATOR CHAMBERS: And you can't find me a case in Nebraska where that has happened because the issue has never arisen here.

SENATOR CORNETT: Correct.

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: And Nebraska Supreme Court has said it looks...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Oh. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the closing on FA280, offered by Senator Chambers to LB 478. The question before the body is, shall FA280 be adopted? All in favor vote aye; opposed vote nay. The question before the body is the Chambers amendment, FA280, to LB 478. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Chambers' amendment.

SENATOR CUDABACK: FA280 has been adopted.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

CLERK: I have nothing further on the bill at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Discussion on advancement of LB 2...478, rather? Senator Chambers.

SENATOR CHAMBERS: Mr. President, obviously the body is bound and determined to rush headlong into the abyss, so I'm going to let them do it. They don't want to work this bill on General File. None of those who support it are offering amendments. But I'm telling you, when it comes up on Select File, mercy is out of the question. Atropos takes the stage, and Atropos is the one who has no mercy. There are serious problems with this bill. And a favor or a boon was granted by Senator Connealy and his cohorts on the Revenue Committee. Now they sit looking out the window and someplace else other than Senator Landis, who we've asked a number of questions. I will have plenty of time to prepare my attack on this bill, and it has nothing to do with Senator Cornett. This is one of those which it would have been better had it not come out here. There have been some situations, Senator Connealy, where it's been stated that it were better that a man not have been born than such and such a thing having occurred. I'm not talking about Senator Cornett, I'm talking about the bill. So what is one to do in a situation such as this? A gentleman who ordinarily is not gentle is allowed to be a gentleman and a gentle man on occasion, to be courtly, polite, courteous, to do what God won't do to you and that's answer your prayer. None of your prayers get answered or the answer is always no. But I'm going to answer your prayer this evening and let you do what you want to do, but you'll pay later. We've got ten days starting tomorrow. I'm going to vote against advancing this bill. I don't know how much confidence people have in the explanations they've been given, but if you do have confidence in those explanations, you see no problem with this bill, you think it's fine. I do not think it constitutes good legislating. I don't think it constitutes good drafting. The questions that have been asked are not answered by the language. We're told, well, this means, or we thought, or we intended. But you're dealing with tax law, a tax break, and you're giving it to certain people whose situation may not

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478

be sufficiently different from other similarly situated people to justify this being done or to argue that it is constitutional. So I'm going to let you do what you want to do. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on advancement of LB 478? Seeing no lights on, Senator Cornett, you're recognized to close.

SENATOR CORNETT: Thank you, Mr. Chair and members of the Legislature. I thank you for the support that I've had this evening on this bill, and I would appreciate your support in passing LB 478. I would be happy to sit down and speak with anyone between now and Select File in regards to any amendments that they feel might be appropriate or any wording that might help the bill along. But again, I want to remind you how important the defense contractors are to the state, and their budding industry. Currently, and I'll reiterate the fact that defense contractors bring in almost a half a billion dollars to the state and we are 44th in the country on the amount of...that we bring in. And this is one of the largest bases in the world and the Unified Command in our state. We could do a lot to grow this industry. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Cornett. The question before the body is advancement of LB 478. All in favor of advancement to E & R vote aye; those opposed vote nay. We're voting on advancement of LB 478 to E & R Initial. Have you all voted on advancement who care to? Have you all voted who care to? There's been a request for a call of the house. All in favor of the house going under call vote aye; those opposed, nay. Record please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unexcused senators please report to the Chamber. The house is under call. Unauthorized personnel, please leave the floor. The house is under call. Senators, please check in. Senator Schrock, Senator Schimek, Senator Langemeier, Senator Engel, Senator

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 478, 713

Stuthman, and Senator Smith. All members are present or accounted for. Senator Cornett, how did you wish to...there's been a request for a roll call vote. Mr. Clerk, please call the roll on the question.

CLERK: (Roll call vote taken, Legislative Journal page 1643.) 25 ayes, 6 nays, Mr. President, on the advancement.

SENATOR CUDABACK: The motion was successful. LB 478 advances. I do raise the call. We now go to General File, 2005 senator priority bills, McDonald division. Mr. Clerk, LB 713.

CLERK: LB 713, introduced by Senator Thompson. (Read title.) Bill was introduced on January 19, referred to Judiciary Committee. The bill was advanced to General File. I do have Judiciary Committee amendments, Mr. President. (AMI108, Legislative Journal page 1194.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Thompson, to open on LB 713.

SENATOR THOMPSON: Thank you, Mr. President. Members of the body, LB 713 is the culmination of work of a group of people who began deliberating in April of 2004. They were a task force appointed by Attorney General Jon Bruning to look at issues of sexual assault in the state of Nebraska. Years ago, when I first started working on these kinds of issues, one of the themes, and this was about ten years ago, that was assigned to these kinds of crimes was "out of the shadows." And one of the things we have done as a state is worked very hard on the issues of domestic violence, assault against children, sexual assault against children. In fact, last year my priority bill dealt with sexual assault against children. And this is filling a set of needs that we've had in the state to look at the issues of sexual assault against teens and adults, which is what this task force did. As is usually the case when a group of people come together and look at things broadly, there were many, many suggestions made, some of them legislative and some of them outside the legislative arena. And the original bill contained many provisions. Some of those are going to need additional work. And even though I won't be here next year, I know that

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 713

there are senators who are interested in those issues who will take up those more difficult sections that need some negotiation and additional work in order to pass them. So what the Judiciary Committee did, and I appreciate their work, was take sections of the bill that did have the support of the committee, that they'd gone through the magnifying glass of the Judiciary Committee, things that we can get accomplished this year as first steps to what needs to be put in place in the state. Sexual assault cases are difficult to investigate and they're difficult to prosecute, and the recommendations of the task force regarding legislative changes center now on three specific recommendations. The first deals with the evidence kit. Law enforcement agencies and hospitals throughout the state use different sexual assault forensic evidence collection kits, and the task force recommended and the Attorney General's Office has agreed to be the lead in the state to develop a uniform sexual assault evidence collection kit for both victims and perpetrators that would provide greater consistency statewide for evidence collection and analysis, and decrease potential errors in evidence collection techniques, and also help with maintaining its proper chain of evidence. And so the first section of this bill deals with that. The second section improves the process by which medical professionals collect the forensic evidence once the victim consents to it, and previously it was required that a law enforcement agency approve this process. The recommendation was that that slowed the process, was an unnecessarily extra step in that process; it would be better if the medical professionals went ahead, with the consent of the victims, to collect that evidence, and that's what that section will do. The third section deals with the statute of limitations. Last year, we lifted the statute of limitation on sexual assault against children. This would lift the statute of limitations on sexual assault crimes involving adult victims. And one of the reasons we bring this is because of changes in the kinds of evidence we're able to collect, and how important it is to be able to track these crimes over time, and the fact that DNA is available to profile these sexual predators who may be repeat offenders. There are ways that that's being monitored, but it may fall outside the statute of limitations. Some processes were put in place, such as in Douglas County, where they filed a John Doe complaint and arrest warrant in

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 123, 535, 633, 713

order to ensure that the statute of limitations would not run. What we really need to do is to clean that up by eliminating the statute of limitations so that these cases can be brought and we can get these people prosecuted in a timely fashion, even if it is after the statute of limitations has run, and stop these things happening to people in our state. So those are the three sections of my bill that remained. Just to set the stage here, originally I was open to, and certainly would have been the decision of the Judiciary Committee even one way or the other, but I was open to the idea of allowing other bills to be amended into my bill as long as they were not controversial or put the other things we were trying to get accomplished in any kind of jeopardy here on the floor. And some other domestic violence legislation was proposed this year, was originally suggested to be part of the bill. It has run into some controversy and I think Senator Bourne will get to that, so that when we get back to the...from my perspective, the bill, the three sections that...topics that you heard of are in my bill, I believe there will be one other area that's going to be some technical information that hopefully we'll end up with. But that is the opening on LB 713. I think it's an important piece of legislation that moves us forward in helping to get these crimes, these sexual assault crimes, have better processes for both investigation and evidence, and prosecution. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. As stated by the Clerk, there are Judiciary Committee amendments. Chairman Bourne, you're recognized to open.

SENATOR BOURNE: Thank you, Mr. President, members. I would like to thank Senator Thompson for allowing us to put a few bills into her priority bill, as the Judiciary Committee has done from time to time. We amended three bills relating to sex offenders and domestic violence into LB 713. Those were LB 123 introduced by Senator Friend, LB 535 introduced by Senator "Skinowhiskey," and...(laugh) that was for Senator Chambers, and LB 633 introduced by Senator Pahls. I will tell you that we had these bills in committee. I took...as the committee Chair, I took input during the hearing. I made changes to those bills based on what I and other members of the committee thought could pass on the floor. And unfortunately, there has been some



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 123, 535, 633, 713

disagreement between some of the various domestic violence groups, and I feel responsible for that. I apologize for that, but I think the best thing to do is to...I'll explain this later, but I think the best thing to do at this point in time is to take out those domestic violence components, and that is what AM1344 will do. We can have a discussion regarding this, what these bills would have done, but basically, bottom line is there is no consensus, in my opinion, on these domestic violence provisions. So what I am going to do is file an amendment to the committee amendment. It's AM1344. You can see that on the gadget. That will remove the provisions of LB 535 and LB 633, so we can discuss that then. Let me tell you exactly what changes were made to LB 713 and LB 123, which are in the committee amendment. As described by Senator Thompson, LB 713 contains several of the recommendations made by the Attorney General's Sexual Assault Task Force. At the committee hearing, Senator Thompson presented an amendment to the committee which struck or revised several revisions to the bill. The committee amendment incorporates these changes and makes the following revisions to the bill. It strikes Sections 1 and 2, which amended the Nebraska rules of evidence, to allow the introduction of evidence of prior sexual assaults and prosecutions for sexual assault. It removes the term "first aid station" from Section 3, relating to the use of standardized evidence collection kits in sexual assault cases. It strikes Section 4 of the bill which provided for anonymous reporting of sexual assault by medical professionals if the victim does not consent to the release of his or her name. And it also struck language in Section 5 which tolls the statute of limitations in criminal cases if DNA evidence discovered prior to expiration of the limitation period leads to the I.D. of a suspect after the statute of limitations has run and, instead, eliminates the statute of limitations entirely for the crimes of first- and second-degree sexual assault. The other component in legislative bill...is LB 123 which proposed to amend the Nebraska statutes regarding sex offender registration and the legal effect of a court order to set aside a conviction. The original bill provided that a court order to set aside a conviction shall not relieve a person convicted of a crime requiring registration under the Sex Offender Registration Act from complying with the terms of the act or preclude proof of



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 123, 713

the conviction whenever the fact of conviction is relevant to a determination of the sex offender's risk of recidivism. LB 123 also added a provision requiring persons to...registered under the Sex Offender Registration Act to notify the sheriff of the county in which they are located within five days if the person does not have a residence or is not temporarily domiciled, and to update the sheriff at least every 30 days while such person remains without a residence. Lastly, the bill expands purposes for which information collected under the Sex Offender Registration Act may be disclosed. Currently, the law allows information to be disclosed to government agencies other than law enforcement only for the purpose of conducting background checks for employment purposes. LB 123 expands this language to allow information to be disclosed to governmental agencies for public safety purposes, and directs the Nebraska State Patrol to develop rules and regs governing the release of such information. The committee amendment changes LB 123 in three ways. The amendment strikes a section of the bill requiring homeless sex offenders to inform the sheriff within 5 days of becoming homeless, and every 30 days thereafter if they remain homeless. Secondly, the amendment adds healthcare facilities providing services to children or vulnerable adults to the list of entities, that would also include schools and day-care facilities, to which the State Patrol is required to distribute the list of offenders with a moderate risk of recidivism. Lastly, the bill strikes the proposed language allowing the State Patrol to share confidential information on sex offenders with other state agencies for any public safety purpose, and instead expands the purposes for which sharing of the information is allowed to include background checks of volunteers. The committee amendment to LB 713 was advanced from committee without opposition. I would encourage the committee...or the body to support its adoption, but I also am asking that you support the next amendment, AM1344, which strikes those provisions of the bill that are the most contentious and the ones which we were unable to obtain consensus on. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne, opening on the Judiciary Committee amendments. Mr. Clerk, motion on the desk, please.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 535, 633, 713

ASSISTANT CLERK: Mr. President, I do have amendments to the committee amendments. The first is offered by Senator Howard, AM1573.

SENATOR CUDABACK: Senator Howard, to open.

SENATOR HOWARD: Thank you, Mr. Chairman, members of the body, I would respectfully request permission to withdraw that amendment as we are doing additional research on the matter.

SENATOR CUDABACK: It is withdrawn.

SENATOR HOWARD: Thank you, sir.

ASSISTANT CLERK: Mr. President, Senator Bourne would offer AM1344. (Legislative Journal page 1569.)

SENATOR CUDABACK: Senator Bourne, to open.

SENATOR BOURNE: Thank you, Mr. President, members. This is the amendment that I mentioned in my opening that basically deletes LB 535 and LB 633. Those are the provisions relating to domestic assault and, basically, and I'll accept the responsibility, I tried to obtain a consensus. I tried to scale back the green copy of the bill to a point where I thought the Judiciary Committee would accept it, and I thought that the body would accept it. And, unfortunately, there's some disagreement on behalf of the various advocacy groups that it doesn't do enough and, as a matter of fact, they feel that it makes a step backwards. As many of you know in here, I have been very active in domestic violence legislation in the last few years, so this is an interest, an area of interest, to me. And I'm disappointed we were unable to obtain consensus. I feel bad for Senator Synowiecki and Senator Pahls and the work they've done on this measure, but I do believe that this is the right course of action, to simply take this language back, take a step back. We'll work on this over the summer and hopefully we can present to you in January a bill that has consensus amongst the various advocacy groups. With that, members, I'd ask for your support of AM1344. Thank you.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 713

SENATOR CUDABACK: Thank you, Senator Bourne. Heard the opening on AM1344. Open for discussion on that motion. Senator Flood, followed by Senator Synowiecki.

SENATOR FLOOD: Thank you, Mr. President and members. I do support Senator Bourne's amendment, AM1344, to the Judiciary Committee amendments. As a member of the Judiciary Committee, though, I wanted to make a comment on Senator Thompson's bill, LB 713, of which I'm a cosponsor. I supported her bill in the green copy and I still support the green copy today, but I will be voting for the Judiciary Committee amendments. But here was the...here was the problem in committee with regard to the mandatory reporting of a sexual assault by healthcare professional to law enforcement. Imagine a sexual assault victim, terrorized, frightened, placed in a horrific criminal situation where another individual sexually assaults him or her and they are taken to the hospital. Not only are they dealing with all of the emotion of a sexual assault. They're in a cold emergency room, a lot of times in rural Nebraska, or a hospital that is more geared to help a sexual assault victim. They're trying to communicate with a health professional, and the health professional is under a duty, as provided in our statutes, to contact law enforcement and immediately come to the hospital. So now this victim of a sexual assault is not only dealing with her immediate health concerns and getting back on track; he or she is going into a separate room, talking to a law enforcement official, trying to describe what happened, who it was, how it happened. And don't get me wrong. I want sexual predators prosecuted. I want them in jail. I think everybody here does. And there are some victims that are ready to talk that minute, but I always think about the victim who may be the victim of a date rape or may be somebody they work with, their boss. There are so many considerations that that victim has to take into account before they feel comfortable with a process, a criminal process, taking place. And when I say "criminal process," I'm talking about the investigation, the interrogation, the apprehension of the suspect, the motions, the trial, a deposition in a criminal case. I've worked with Senator Chambers on this. Senator Bourne and I have discussed it at length. Senator Thompson had a provision in the original green

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 713

copy of LB 713 that would have removed the mandatory requirement. It would have used the state evidence kit that would be prescribed by the Attorney General's Office, and it would be...would be stored by the hospital in some form or fashion for later use by law enforcement and the authorities. I'm not going to offer an amendment. I'm not going to try and change that because I am also unsure as to how we would proceed in a way that would protect the evidence, make it valuable evidence for a prosecutor down the road, merge with the constitutional rights of a defendant, and accomplish what that victim wants in the end, is justice, and time to make those decisions. But I think we have to think hard in the future, maybe not this year but some year, for those senators that will be around here for a number of years, we need to think about how we could address the concerns of the victim with regard to the mandatory reporting. My biggest fear is that there's a victim in Nebraska today that did not report what happened to her or him because they are afraid of what will happen criminally after that, and they're not prepared to go down that road.

SENATOR CUDABACK: One minute.

SENATOR FLOOD: We live in a culture that does not treat sexual assault victims very well when they get to court. The process itself can be very painful for the victim, and I think that's something we have to think about down the road. I do support the evidence kit. I think Senator Thompson was right on with making this uniform, and removing the statute of limitations for these horrific crimes makes sense to me. There's always an evidence problem the further it goes down the road, but I know that county attorneys across Nebraska will do a good job in prosecuting cases where they've got the evidence and they can match a defendant to the evidence. So I do support the bill. I will be supporting the committee amendments and Senator Bourne's amendment with regard to domestic violence legislation. But I do hope that at some time this Unicameral looks at how we can address the immediate situation that a victim is placed in following an assault. Thank you, Mr. President. I return the balance of my time.

SENATOR CUDABACK: Thank you, Senator Flood. The issue before

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 535, 632, 633, 713

the body is the Bourne amendment to the Judiciary Committee amendments to LB 713. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. Senator Bourne, would you yield?

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Yes.

SENATOR SYNOWIECKI: Senator "Corn," I truly, genuinely appreciate all the work, all the hard work the committee put into these bills, and particularly as you're attempting to strike the domestic violence portion of these, LB 633, LB 632, LB 535, which obviously I have a little bit of an interest in. You know, these bills represented a lot of hard work on behalf of a lot of individuals within the system, working with the advocates and so forth, as Senator Pahls has done as well. And, you know, I can assure you that after having worked on the front lines within the system for over ten years that there are portions of these bills that do indeed, I believe, represent sound public policy, and I don't think, in my discussions with some of the advocates and with some of the committee amendments, I don't think we're miles apart by any means on some of these issues. What I'm seeking is perhaps if we can salvage, at least, parts or components of these bills, either between now and Select File, or perhaps even I'd be willing to, during the interim, to enter into a dialogue with you and some other committee members to see if perhaps we can arrive at some consensus. I don't think we're miles apart. I just...actually, I'll give you the rest of my time if you want to respond to that overture.

SENATOR BOURNE: Thank you, Senator Synowiecki.

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: You know, I have been approached by several people from various advocacy groups that want to sit down and one in particular that I need to set up a meeting. I'm going to try to do that tomorrow. I apologize. At this time of the year

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 535, 633, 713

it's very difficult to, as you all know, to get off the floor and...off the legislative floor and get that time scheduled, and so I need to do that and I will do that. I make that commitment to you. Our struggle is this. I know...I know that there were...there was a lot of work put into this by you and Senator Pahls. Just to remind the body that we did have opposition to both bills, particularly on LB 535. We had a public defender who came in and testified in opposition and had some problems with how the bill would work. On LB 633 we had a judge from Lancaster County that came and testified in opposition. And I will tell you, Senator Synowiecki, that we tried to respond to those concerns, as well. We tried to balance the advocacy concerns, the people who brought us the green copy, with those people who are also in the system, the judge and the public defender in this case who opposed several provisions in the bill. I tell you where I think I broke down or the committee perhaps broke down is that we didn't involve these groups enough in consensus to try to come to middle ground, and that was simply a time factor. These are fairly emotional issues and people tend to invest of themselves in them, and so I made the decision that we were just going to work with the committee. We were going to respond to those people in the system who opposed the bills and, unfortunately, in doing so, we did not strike a balance where I feel that it is safe to proceed at this particular time. I would be happy to sit down with you, with Senator Pahls, or anyone, for that matter, between now and Select, or obviously we will be working on this throughout the interim and would mostly...would very much appreciate your input and Senator Pahls', as well.

SENATOR CUDABACK: Thank you, Senator Bourne and Senator Synowiecki. Did you wish to take your time back, Senator?

SENATOR SYNOWIECKI: That's fine. Thank you, Senator.

SENATOR CUDABACK: Yeah. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President. Just briefly, I wanted to comment on Senator Flood's remarks. And I appreciate the fact that he's interested and he's going to carry on with some of these issues that are more difficult to write the law in



TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 713

regard to. I will say that a few months ago, before I began working on this piece of legislation, I had a group of people who work on the issues of sexual assault in my office, and I just asked them what they thought the most important thing was or the biggest area of concern was, and they spent quite a bit of time talking about it and they came back around full circle and everyone in the room, from all walks of life in terms of these issues, came back to the same issue that Senator Flood mentioned, and that was the mandatory reporting when people come to the hospital seeking medical care. And that is an area that needs work, and I hope, and I'd be happy to help from outside the body, to get this issue resolved. It was a difficult piece of legislation to write. It had a lot of problems and we just couldn't get it done in time this year. And then just by way of conclusion, I didn't spend much time on talking about victims and what happens to them, but this legislation is important not only for the prosecution and investigation and making sure we're getting those people off the streets who commit these kind of crimes, but also it rolls out through our system. Nearly a third of all sexual assault victims develop posttraumatic stress disorder in their lifetime. Victims of sexual assault also experience higher rates of depression, anxiety disorders, mental illness, eating disorders, things that I know the Health and Human Services Committee has worked on in a variety of ways over the years trying to get to those mental health issues. Rape victims are 5.3 times more likely to use prescription drugs nonmedically, 3.4 times more likely to have...use marijuana, 6.4 times more likely to have used hard drugs or cocaine. And these victims are also more...4 times more likely to contemplate suicide than nonvictims, and 13 times more likely to have attempted suicide. So we can, in passing this bill, make a few strides. More work needs to be done. It helps not only in the prosecution but also hopefully relieves the stresses on the other parts of our system when we try to treat individuals who have experienced this trauma in their lives. So I appreciate the support of Senator Flood and look forward to working with him in future years on this, and would appreciate your support of this amendment to the Judiciary Committee amendment, the Judiciary Committee amendment, and then passage of the bill. Thank you.



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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 535, 633, 713

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Bourne, there are no further lights on. We'll recognize you to close on AM1344.

SENATOR BOURNE: Thank you, Mr. President. Just again to reiterate, what we are doing with AM1344 is removing that language from the Judiciary Committee amendment that was put there that were LB 535 and LB 633. I'd appreciate your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on AM1344, offered by Senator Bourne to the committee amendments. Question before the body is, shall that amendment be adopted? All in favor vote aye; opposed, nay. The question before the body is the Bourne amendment, AM1344, to the Judiciary Committee amendments to LB 713. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of the amendment, Mr. President.

SENATOR CUDABACK: The Bourne amendment has been adopted. Anything further on the Judiciary Committee amendments, Mr. Clerk?

ASSISTANT CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Back to discussion of the committee amendments themselves. Seeing no lights on, Chairman Bourne, you're recognized to close on AM1108.

SENATOR BOURNE: Thank you, Mr. President, members. What's left in the Judiciary Committee amendment is Senator Thompson's bill, which requires the utilization of a standardized kit when a...when a medical...when medical or, excuse me, healthcare professionals are gathering evidence for or from a rape victim. It also adds healthcare facilities providing services to children or vulnerable adults to the list of entities to which the State Patrol is required to distribute the list of offenders with a moderate risk of recidivism, and, let's see, I think that's pretty much it. Thank you. I'd appreciate your support.

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

LB 90, 146, 332, 713

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on the Judiciary Committee amendments. The question before the body is, shall the amendments be adopted? All in favor vote aye; opposed, nay. The question before the body is adoption of the committee amendments offered by the Judiciary Committee to LB 713. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: 30 ayes, 0 nays on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. Anything further on the bill, Mr. Clerk?

ASSISTANT CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Back to discussion of advancement of LB 713 to E & R Initial. Seeing no lights on, Senator Thompson. Senator Thompson waives closing. The question before the body is, shall LB 713 advance to E & R Initial? All in favor vote aye; opposed, nay. We're voting on the advancement of LB 713, offered by Senator Thompson, to E & R Initial. Record please, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance the bill, Mr. President.

SENATOR CUDABACK: LB 713 advances. Items for the record, Mr. Clerk?

ASSISTANT CLERK: Mr. President, I do. Amendments to be printed: Senator Price to LB 146, Senator McDonald to LB 332. Senator Fischer would ask to add her name to LB 90. (Legislative Journal pages 1644-1645.)

Mr. President, I do have a priority motion. Senator Jensen would move to adjourn until Thursday, May 19, 2005, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn till May 19, 9:00 a.m. All in favor of the motion to adjourn say

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Transcriber's Office  
FLOOR DEBATE

May 18, 2005

aye. Opposed, nay. The ayes have it; we are adjourned. Have a nice evening.

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